

# CovertAction

Q U A R T E R L Y



## ECONOMIC INTELLIGENCE

- Justifying Budgets and Finding Purpose
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- Cryptography and Privacy
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## JUSTICE IN AMERICA

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## INTERNATIONAL

- Israel, Iran, & the Bomb
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## Bill's First Bomb

**T**he message that fell with the U.S. bombs on Iraqi intelligence headquarters and civilian homes a mile away was not lost on the pundits. Thus far, Bill Clinton, marked by his anti-Vietnam War stance, had no experience in that most American of presidential prerogatives — meting out mega-death with equanimity. (As governor of Arkansas, he had overseen only a few executions — including that of a mentally retarded man.) With the June 26 attack, Clinton was officially bloodied as commander-in-chief and leader of the “free world.”

Even before the bodies were dug from the rubble, the talking heads were assessing the degree to which the attack was motivated by Clinton's desire to boost his sagging popularity ratings.

Clinton justified the attack by claiming irrefutable evidence that Saddam Hussein had personally organized an attempt to assassinate George Bush during the former president's April 1992 visit to Kuwait. But even Pentagon officials, according to NBC News, cast serious doubt on the conclusiveness of the evidence. Hence, Clinton's carefully couched phrasing at his June 29 news conference: “Our analysts have no experience of such an operation of that magnitude being authorized at other than the highest level.” So suspect were the motives and proof that the *New York Times* editorialized: “Let's hear the evidence, rather than assertions of officials who say they have it.” To date, neither the White House, the military, nor the CIA has provided proof of Saddam's direct involvement or even established the reality of the plot. Most of the 14 plotters, it turned out, were penny ante liquor smugglers and, if they were undertaking a major

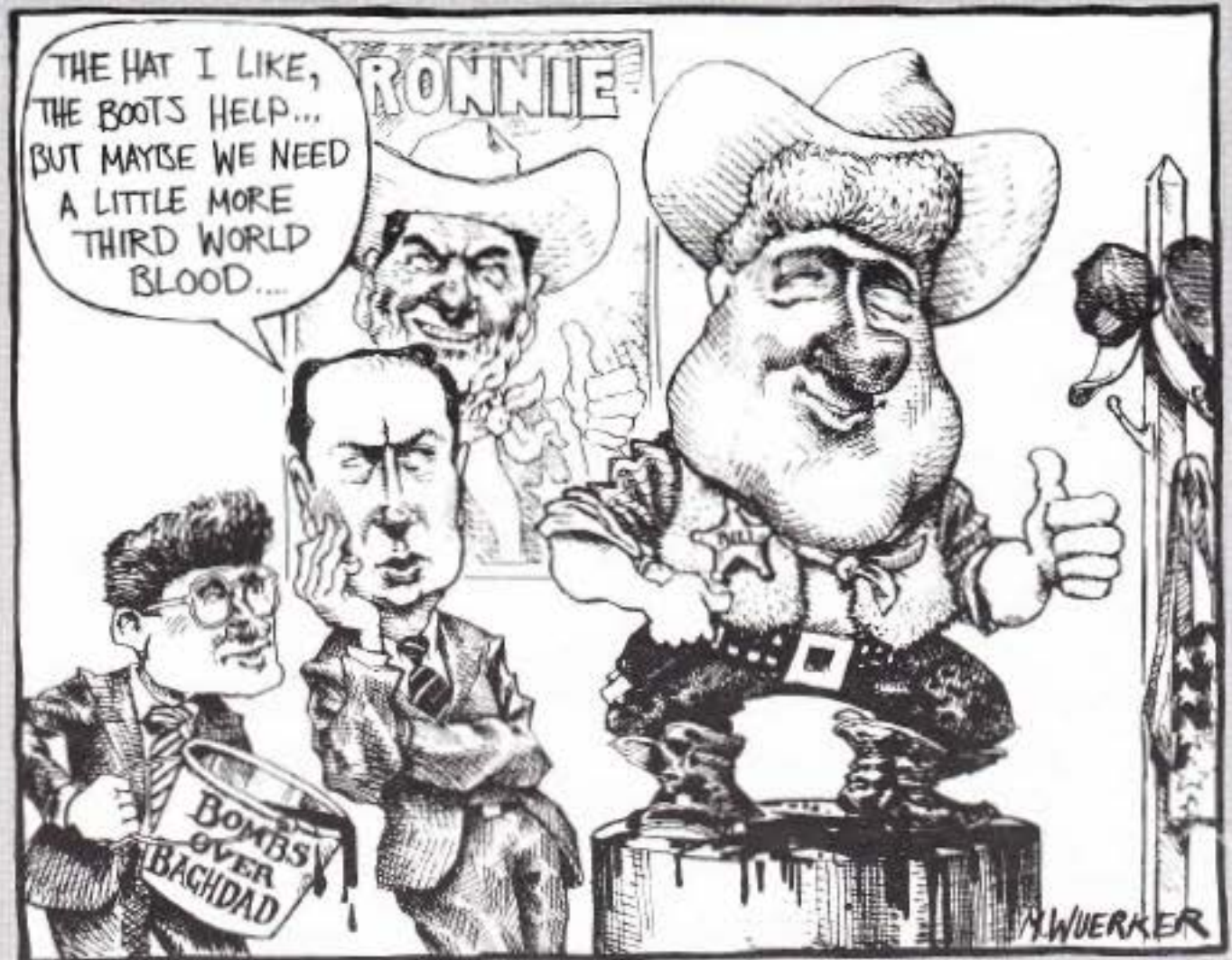
international assassination, they were seriously incompetent — the bomb was never on Bush's intended route.

Furthering speculation that the attack was designed to promote political rather than strictly military objectives was the peculiar timing of the Baghdad bombing — before a verdict was reached in the trial of the alleged assassination plotters. This premature action may have reflected the Kuwaiti justice system's low level of credibility. Furthermore, the interrogation could, as one senior U.S. official admitted in the *Los Angeles Times*, have been influenced by torture. While human rights organizations haven't proven that these suspects were tortured — a not unusual judicial procedure in Kuwait — they have established that the alleged plotters, in violation of Article 14 of the International Covenant on Civil and Political Rights, were not allowed to see their lawyers.

Ignoring this particular violation of international law, the U.S. justified the unilateral attack under an exotic interpretation of Article 51 of the UN Charter, which grants states the inherent right of self-defense. The definition was stretched as if in a fun house mirror: The U.S. made no differentiation between a plot and an accomplished act; it equated an assault on a former head of state with an attack on a country he no longer represented; and it likened retaliation aimed at restoring political reputation to military action designed to protect territorial integrity.

Javier Perez de Cuellar, UN Secretary-General during the Gulf War, denounced this arcane application of the principle of self-defense. “I regret that this decision was made,” he said, “and I don't find any way of justifying it.”

The criminality of the attack is apparent if we imagine that any of the more than 30 world leaders who have actually been targeted by U.S. assassination plots had bombed CIA headquarters in Langley, Virginia and wiped out a few neighboring families into the bargain. (See p. 9.)



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*CovertAction Quarterly*, 1500 Massachusetts Ave., NW, #732, Washington, DC 20005, (202) 331-9763, 331-9751 (fax). *CovertAction Quarterly*, Number 46, Fall 1993. Published quarterly, by Covert Action Publications, Inc., a District of Columbia Nonprofit Corporation, copyright ©1993. Indexed by *Alternative Press Index*, University Microfilms, ISSN 0275-309X. All rights reserved. Printed in U.S.A.



# CovertAction

Q U A R T E R L Y

## No More Mr. Nice Guy: The CIA and Economic Intelligence



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The CIA touts economic intelligence to justify budgets and redefine its mission. With shifting alliances and corporations that span oceans, it's hard to tell friends from foes.

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Front Cover photos: Top: Terry Allen, R. James Woolsey; Middle, Bill Biggart/Impact Visuals, Ste. Genevieve Jail (Missouri); Bottom: Andrew Lichtenstein/Impact Visuals, Israeli soldier on Lebanon border.  
Back Cover: Save Lebanon, victim of July 1993 Israeli bombing of Lebanon.

# "No More Mr. Nice Guy"

## The CIA in Search of Something to Do

*The debate on economic intelligence was stoked by the deterioration of U.S. firms' competitive position — and by the intelligence agencies' need to redefine their missions in the post-Cold War era.*

Doug Vaughan

Last spring, as the incoming Clinton administration faced the challenge of economic decline in a global market and a new director of the CIA confronted the task of re-orienting the Agency to a much-changed world, a reporter got an envelope in the mail. Inside was a 21-page document, "Defense Confidential," which laid out assignments for French spies to steal technological secrets from U.S. firms. The document was authentic. The "news," however, was not: The resulting article reprised a plan, first revealed in 1990, in which the French government targeted 49 high-tech companies, 24 U.S. financial institutions, and six U.S. government agencies.<sup>1</sup> The "revelation" prompted a belated outcry in Congress and official protest,<sup>2</sup> the tenor of which was caught in a quote attributed to "a senior intelligence official":

"No more Mr. Nice Guy."<sup>3</sup>

Doug Vaughan is a Denver-based investigative reporter. His work has appeared in major newspapers and magazines in the U.S., Europe, and Latin America. He contributed to the prize-winning documentary films *Homeboys*, *Panama Deception*, and the BBC's coverage of the BCCI and Noriega cases. Current projects include a book (*The Search for the La Penca Bomber: Terror and Propaganda in the Contra War*), an inquiry into the Pan Am 103 case, and a screenplay.

1. Frank Greve, "French drafted massive spy plan on U.S. targets, documents show," Knight-Ridder Newspapers, April 16, 1993.

2. Susan Bennett, "U.S. calls France on the carpet," Knight-Ridder Newspapers, as reprinted in *Denver Post*, May 5, 1993, p. 19A.

3. Quoted by John Mintz, "CIA: French Targeted Secrets of U.S. Firms," *Washington Post*, April 27, 1993, p. C1.



Terry Allen

R. James Woolsey

The Clinton administration "is taking off the gloves," reported the Associated Press.<sup>4</sup> Henceforth, the U.S. would no longer stand idly by, watching its secrets being stolen by ostensible allies and sold back in the form of cheap products that undercut U.S. companies and jobs.

Whether the CIA should become actively involved in what used to be called industrial espionage had become, in the words of the new director, "the hottest current topic in intelligence policy."<sup>5</sup> The problem, James Woolsey explained to his confirmation panel, is that "not everyone around the world plays the game we do."<sup>6</sup> Among the dirty

players, the "cheaters," were the French, Japanese, Chinese, and Israeli intelligence services which actively gather intelligence on U.S.-based corporations and share it with private or state-owned companies.

4. Ruth Sinai, "U.S. prepares to toughen stance on industrial spying," Associated Press, *Denver Post*, May 1, 1993, p. D2.

5. Associated Press, *Hearing of the Senate Select Committee on Intelligence on the Nomination of R. James Woolsey to Become Director of Central Intelligence*, February 2, 1993, testimony of R. James Woolsey.

6. *Ibid.*

7. These episodes are recounted in Peter Schweitzer, *Friendly Spies: How America's Allies Are Using Economic Espionage to Steal Our Secrets* (New York: Atlantic Monthly Press, 1993), relying on intelligence sources; c.f., the compendium "Security Awareness in the 1980s," a collection of feature articles from *Security Awareness Bulletin*, 1981-1989, Security Awareness Division, Educational Programs Department, Department of Defense Security Institute, Richmond, Va.



Even the most casual reading of the French document, however, shows that the main targets were aerospace and electronics companies with military technology, rather than commercial or strictly "economic" secrets. The leak of the three-year-old paper was clearly part of a coordinated campaign to draw out U.S. agencies to spy on economic competitors. The ensuing debate was stoked by the deterioration of those firms' competitive position — and by the intelligence agencies' need to redefine their missions in the post-Cold War era.

### "They're Robbing Us Blind"

The corpse of the USSR was still warm when the clamor, fed by leaks and unnamed sources, rang out for the CIA and other agencies to put their resources to work for private business. In early 1989, the CIA, under William Webster, commissioned an in-house study on the viability of establishing one office to coordinate intelligence-gathering on the research and development efforts of foreign governments, research centers and businesses. The idea had percolated up from different sections of the bureaucracy and dripped back down as an internal policy review. In the end it evaporated for the usual reasons: Regional desks didn't want to give up operational turf in the face of impending budget cuts. Instead, a make-work project began, interrupted only for Operation Desert Storm.

One of the chief purveyors of this view is Peter Schweitzer. His book, *Friendly Spies: How America's Allies Are Using Economic Espionage To Steal Our Secrets*, and excerpted articles<sup>8</sup> rely heavily on former intelligence officials, many of whom now work as consultants to private business. "Our allies are robbing us blind," wrote Raymond Rocca, former Deputy Director, Counter-Intelligence Division, CIA.<sup>9</sup> "If you don't think we're being exploited by friends and enemies," lamented Walter Deeley, former Deputy Director, National Security Agency, "Buster, you're crazy."<sup>10</sup> "It has been known for some time that economic espionage takes place. But only now are people starting to talk about it. The real question is what to do about it,"<sup>11</sup> said former Director of Central Intelligence Richard Helms.

To characterize such sources as biased by their pocket-books is perhaps too obvious.<sup>12</sup> These experts sounded a



Marcelo Montecino

The history of U.S. economic intelligence and sabotage includes destabilizing Chile and fomenting the 1973 anti-Allende coup. Above, some of the thousands rounded up in mass sweeps, taken to the stadium, tortured and killed.

common theme relying heavily on use of the first person plural possessive. They presented a besieged and friendless America victimized because of its excessive benevolence and therefore justified in taking aggressive action against unscrupulous foreigners. Most of these intelligence veterans were caught off guard when the Berlin Wall fell in November 1989. They were still living in the world they had helped shape after 1945: a world divided into two competing camps. The policies of the Reagan-Bush era were geared toward confronting and defeating an enemy and the dust had barely settled before they conjured a new slew of demons.

The opening salvo was fired at the National Press Club by Sen. David Boren (D-Okla.), then chair of the Senate Select Committee on Intelligence. Citing anecdotes that would become familiar fodder over the next four years, he declaimed: "The spy race is heating up against commercial targets in the United States. More and more... [the goal of foreign intelligence agencies'] espionage is to steal our private commercial secrets for the sake of national economic purposes.... We are going to have to think about the role that we want our own intelligence service to play in terms of protecting America's commercial and economic interests around the world."<sup>13</sup> By focusing on the "alleged theft" of "our" secrets, Boren

8. See Peter Schweitzer, "They're Stealing Our Secrets," *The American Legion*, Special Supplement, January 1993.

9. Schweitzer, on the dust jacket of *Friendly Spies*.

10. *Ibid.*, p. 3.

11. *Ibid.*, p. 283.

12. Aside from his government pension, for example, Helms derives income as president of the Washington, D.C.-based Safeer Company, a private security firm he started in 1977. He also chairs the advisory board of the Parvus Company, a consulting firm on national security issues based in Silver Spring, Maryland and staffed by former intelligence professionals.

13. Boren, address to the National Press Club, Washington, D.C., April 3, 1990.



diverted attention from the CIA's transfer of lethal technology to such "friends" as the Afghan *Mujahadeen*, Iraq, and Iran.

The Press Club is a near-perfect forum for a policy-maker to float a trial balloon and for a politician to cultivate an image as a deep thinker.<sup>14</sup> Few in the obliging media stopped to ask, for example, whether IBM was "losing billions and billions" to international piracy, as one of its executives would soon claim,<sup>15</sup> or if incompetent management might at least be a co-culprit in Big Blue's fall from profitable grace.

Never mind. A campaign was under way, and the constant repetition of the theme was necessary for its success. There would be some hitches and glitches, of course: "Once you've got the information," pondered a Boren aide, "who do you give it to? Ford, General Motors, Chevrolet or Oldsmobile?"<sup>16</sup>

There was also the sticky problem of distinguishing them from us. What about U.S. companies that are partially owned by foreigners? What about foreign-registered companies owned by U.S. citizens? Not to put it too crassly, a White House techno-wonk wondered, "How would it be disseminated without at the same time giving advantage to foreign competitors?"<sup>17</sup>

By 1991, the pressure had triggered the predictable policy review by the National Security Council at the direction of President Bush<sup>18</sup> which, in turn, prompted a new wave of articles on the foreign economic threat.<sup>19</sup> At the September 1991 hearings on the nomination of Robert Gates as Director of Central Intelligence (DCI), Sen. John Warner (R-Va.), who represents a state with a large stake in conversion from military to civilian production, returned to the theme: "We've got to focus more of our assets...on trying to give American industry, American traders,



Flick Reinhard

**Dennis DeConcini (D-Ariz.), chair of Senate Select Committee on Intelligence.**

a competitive edge." Gates replied, predictably, that there should be better coordination between agencies. For example, more non-proprietary, unclassified information gathered by the agencies could be made available to business generally through the Commerce Department. Beyond that, however, he was noncommittal.<sup>20</sup>

When pressed to be more specific, Gates defined "three broad tasks" for the CIA in economics. The first was to provide analyses of world economic trends, and intelligence on the negotiation positions and strategies of other countries. (None of the senators asked if this would require CIA operatives to bug the hotel rooms of foreign diplomats, as the French were accused of doing to former Under-Secretary George Ball when he was in Paris for trade negotiations.) The second was to monitor trends in technological developments; and the third was to engage in counterespionage.<sup>21</sup> More of the same, but more of it.

The ongoing policy review would consider these tasks, Gates assured the senators, but once confirmed, he vetoed the idea of spying on economic competitors.<sup>22</sup> Henceforth, U.S. intelligence agencies would supply U.S. companies with general

information to help them compete, but not with information that would be illegal if acquired in the United States. "We will not conduct — and have not conducted — industrial espionage" on their behalf, a CIA spokesperson declared.<sup>23</sup>

Congressional advocates fearful of foreign competition, however, were not assuaged. Rep. Jack Brooks (D-Texas), chair of the House Judiciary Committee, convened hearings the following spring before his Subcommittee on Economic and Commercial Law. A conga line of security experts danced to the witness table and sang the same song: Foreign governments were using advanced cryptographic methods to conceal sensitive communications, but could also break into commercial telephone, telex, fax, and other cable traffic, intercept microwave relays, and otherwise steal proprietary

14. See for example, Jay Peterzell, "When Friends Become Moles," *Time*, May 20, 1990, p. 50.

15. Marshall C. Phelps, Jr., vice president of commercial and industrial relations, IBM, to Hearings before the House Judiciary Committee, September 16, 1991, quoted in Robert H. Williams, "Economic Spying by Foes, Friends Gain Momentum," *Signal*, July 1992, pp. 57-58.

16. Ken Levit, of Boren's staff, quoted in Neil Munro, "U.S. Mulls Industrial Spy Role," *Defense News*, May 28, 1990, p. 35.

17. Michelle K. Van Cleave, Bush administration assistant director for national security affairs and general counsel, Office of Science and Technology Policy, quoted in Munro, *op. cit.*

18. *National Security Review*, "Intelligence Capabilities: 1992-2005." The policy review was initiated in March 1991.

19. See Richard A. Best, Jr., "The U.S. Intelligence Community: A Role in Supporting Economic Competitiveness?" *Congressional Research Service* (CRS), Library of Congress, December 7, 1990.

20. Hearings, *op. cit.*, September 16, 1991.

21. Gates Testimony, "Nomination of Robert Gates as Director of Central Intelligence," hearings before U.S. Senate Select Committee on Intelligence, September 17, 1991, Vol. 1, pp. 580-81.

22. Richard A. Best, Jr., "Intelligence Reorganization Proposals," CRS, December 18, 1992 (updated version).

23. Mike Mansfield, quoted in Neil Munro, "Intelligence Community Will Share Only Legal Data With U.S. Industry," *Defense News*, October 14, 1991, p. 28.



information from U.S.-based companies.<sup>24</sup> The French filched competing Soviet and U.S. firms' bids to supply India with fighter aircraft and the makers of the Mirage jet won the bidding. The Israelis slipped a contract for a top-secret airborne reconnaissance camera to an Israeli firm. Japanese government agencies were not directly engaged in such thievery, one official demurred; when pressed to come up with a suitably damning anecdote, he cited a company which pled guilty to transporting information stolen from IBM. (Of course, that was in 1983, but the point was made.)<sup>25</sup>

DCI Gates declined an invitation to appear at a public hearing and identify governments engaged in economic espionage against U.S.-based companies. "Some governments ...nearly 20 governments overall — are involved in intelligence collection activities that are detrimental to our economic interests at some level."<sup>26</sup>

Gates was being diplomatic. Or perhaps deliberately vague to avoid compromising ongoing operations directed at foreign firms or counterintelligence efforts to stop foreign governments. Then again, maybe the anecdotal accounts, cited repeatedly in hearing after hearing, story after story, didn't amount to much.

### Smart Weapons, Dumb Policies

The campaign for economic spying paused in 1991 while the campaign for the presidency roared by, but resumed with a vengeance as the Clinton-Gore crowd took office. At first, their nominee for Director of Central Intelligence appeared out of step with the administration's "it's the economy, stupid" marching song. In his pre-nomination declamations, Woolsey seemed stuck for a way to relate intelligence concerns back to the new administration's economic agenda. He drummed away on the message that the collapse of the Soviet Union, combined with the spread of advanced weaponry, had returned us to "a more lethal version of the world than existed before 1914."<sup>27</sup>

At his confirmation hearings, Woolsey waxed zoological: The Soviet dragon may have been slain but the world is still a dangerous place. "We live now in a jungle filled with a bewildering variety of poisonous snakes, and in many ways the dragon was easier to keep track of."<sup>28</sup> Slithering through the landscape were terrorism, nationalism, fundamentalist Islam, drug traffickers, and the usual reptilian leaders who threatened the picnic.

Woolsey would have to face, or cleverly avoid, a contradiction: The venom of U.S. enemies derives its power from the very process of research, development, and transfer of technology that capitalism is supposed to stimulate. For example, the development and export of semiconductors is

## Woolsey's Good Connections

R. James Woolsey, Director of Central Intelligence (DCI), comes to Langley naturally, *i.e.*, through the policy-making councils of the right wing of the Democratic Party. A graduate of Yale Law and Oxford, like Bill Clinton, he arrives via the Defense Department (policy analyst, 1968-69), National Security Council staff, adviser on the Strategic Arms Limitation Treaty (SALT I), Senate Armed Services Committee staff (1970-73), and Undersecretary of the Navy in the Carter administration (1977-79). He then became a partner in then-CIA General Counsel Anthony Lapham's Washington law firm, Shea & Gardner (1979). Under Reagan, Woolsey served as a consultant on nuclear weapons policy and strategy.

He advised the Dukakis campaign in 1988, but kept the ear of his friend Brent Scowcroft who became Bush's national security adviser. Under Bush, Woolsey was appointed Ambassador and U.S. Representative to the Negotiation on Conventional Armed Forces in Europe (1989). His tennis partner, Les Aspin, became Clinton's Defense Secretary. He has been a Director of Martin Marietta; British Aerospace, Inc.; Fairchild Industries; Titan Corporation; and DynCorp.

Between 1968 and 1970, while his official biography indicates he was simply a Program Analyst in the Office of the Secretary of Defense, Woolsey revealed at a July 28, 1993 congressional hearing that he was "analyzing remotely piloted vehicles and satellites for the National Reconnaissance Office," a super-secret and massively-funded Pentagon unit that has been known of for years but the name of which was only formally acknowledged by the government very recently. NRO runs the space satellites carrying "military payloads."

highly profitable for U.S. corporations. The technology, however, can fit as neatly in smart bombs as in smart computers.

In his first public speech as DCI, however, Woolsey seemed to have gotten the message emanating from the White House. He put economics at the top of his list of priorities, and emphasized the need to analyze and predict the performance of the world economy, and various national economies. That implies, for example, the need to monitor international monetary flows, which means in turn (although he didn't mention it) more stringent and extensive regulatory requirements on financial institutions to report transactions. Hence, more intensive means of monitoring compliance. So, more and bigger, faster computers. But also, necessarily, expertise in unauthorized access — hacking — that is, stealing data about private transactions from private data banks.

24. See testimony of Milton J. Socolar, special assistant to the Comptroller General, General Accounting Office, before Jack Brooks' (D-Texas) Subcommittee on Economic and Commercial Law, March 1992.

25. *Ibid.*

26. *Ibid.*

27. R. James Woolsey, "The End of the Cold War: Where Do We Go from Here?" remarks at the Smithsonian Institution Distinguished Speakers Program, Washington, D.C., March 11, 1993.

28. Intelligence Hearings, *op. cit.*, February 2, 1993.



Domestically, the implications for civil liberties are obvious. So, too, are the temptations to use such information to speculate in stock, commodity futures or currencies to benefit either individuals or the Agency itself. Internationally, the CIA has a long history of using economic information for economic sabotage, embargo, manipulation of markets, and creation of artificial shortages of critical commodities to provoke unrest.<sup>29</sup>

Woolsey was aware of the controversial foreign policy ramifications and worried publicly that the Agency would get embroiled in essentially private disputes that could compromise its mission. He took pains to distinguish between a simple extension of traditional intelligence — which has always sought to determine the economic capacity of potential adversaries — and CIA spying on friendly nations for the benefit of U.S. corporations. "I think down that path lies peril for the community," warned his predecessor, Gates.<sup>30</sup>

This wariness was shared by many in the Cold War generation of intelligence officers who were motivated, or so they say, by something more than mere lucre. When one false step could bring mass destruction, economic espionage seemed both unseemly and petty. "The fact that one of your allies was spying on one of your companies was deemed unimportant," recalls Colby.<sup>31</sup>

A station chief once reported to Admiral Stansfield Turner (DCI 1977-81) that a source had reported data on bids submitted by two foreign companies competing with a U.S. company for a foreign contract. Asked what he did with the tip, the station chief said, "I didn't do anything with it. We don't have a policy to deal with it."<sup>32</sup> Turner tried to remedy that by pushing the community to share counterintelligence with private companies. The other agencies resisted and the policy remained inchoate.

In the post-Cold War era, Sen. Dennis DeConcini (D-Ariz.), chair of the Senate Select Committee on Intelligence, actually wants the CIA to use its capabilities to mount covert operations against foreign business. "Every two or three years while I was in intelligence some turkey would come up with this idea," says the former director of NSA, William Odom. "I'd quash it."<sup>33</sup>

Not anymore. Republican lawmakers, especially, have been anxious to unleash the spooks on the competition. "Economic intelligence is going to be increasingly important to our country," says Sen. John Danforth (R-Mo.), also on the intelligence committee. If the CIA or NSA learns that foreign competitors are bribing customers, Danforth and others suggest, the Agency should notify the target.<sup>34</sup> No problem, but

what if the U.S.-based company is the culprit, like Lockheed in the early 1970s? Should the spies tell the foreign target? Should they tell the foreign cops? Should they keep their mouths shut and blackmail Lockheed? How exactly does one go about defining an "American" company anyway?

### Intelligence vs. Counterintelligence

Since most economic intelligence is gleaned from "open" sources (newspapers, magazines, books, reports of government agencies, universities and think-tanks) control over access is difficult to regulate. Increasingly, the sheer quantity of sources ensures that only those with the financial and technical ability to obtain and analyze the data will be able to put it to use. Like capital, information is being concentrated in fewer hands. News organizations, privately owned databases, electronic information utilities — all private enterprises — guard this information in order to maintain a competitive advantage, or sell it as a commodity for profit. How will the CIA fit into this? As just another customer for CompuServe?

"We don't have a workable policy to address this question in a meaningful manner," says Sen. Frank Murkowski (R-Alaska), one of those pushing for the CIA to get into business as a provider of economic intelligence.<sup>35</sup> Why, then, not privatize the operation and let the CIA support itself by selling intelligence to the highest bidder? Better yet, go all the way and make the Agency the manufacturer of the information and turn a profit.

Economic counterintelligence encompasses identifying foreign spies and preventing them from stealing proprietary information — trade secrets, intellectual property like patents, and technology itself, especially in commodities with potential military application. According to Woolsey, that mission is a legitimate function of the intelligence community. This position actually represents a shift in emphasis worth noting and watching: Before Stansfield Turner's tenure, it was considered bad policy to notify the target of foreign espionage. The revelation could compromise sources and methods. Now, the CIA's proposal to engage in economic counterintelligence has revived an old turf war with the FBI. Last summer, the FBI revised its list of threats posed to national security by foreign intelligence agencies. At the top, acquisition of sensitive technologies by hostile powers; next, "industrial proprietary information and technology."<sup>36</sup>

### Consistent Abuse

The hubbub over industrial espionage — should we or shouldn't we — is a dissimulation to the extent that it suggests the CIA never did it and promises never to do it again. The CIA has always spied on foreign governments and corporations for the benefit of U.S.-based companies. More important, the "us versus them" rhetoric that pervades the debate helps to foment hostility and xenophobia: Who is this "we" they're talking about, anyway?

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29. Cuba, 1961-present; Chile, 1970-73; Vietnam, 1965-present; and Iraq 1991-present are a few examples of U.S. use of economic weapons to destabilize uncooperative regimes.

30. Woolsey, *op. cit.*; Gates quoted from confirmation hearing, September 16, 1991.

31. Thomas Omestad, "Cloak and Dagger as R&D: The French Do It The Brits Do It But Corporate Spying May Not Be for Us," *Washington Post*, June 27, 1993, p. C2.

32. Gerald F. Seib, "Business Secrets: Some Urge CIA to Go Further in Gathering Economic Intelligence," *Wall Street Journal*, August 4, 1992, p. A1.

33. Omestad, *op. cit.*

34. Seib, *op. cit.*

35. Seib, *op. cit.*

36. Omestad, *op. cit.*



# HIT LIST

William Blum

The U.S. bombing of Iraq on June 26, in retaliation for an alleged Iraqi plot to assassinate former President George Bush, "was essential," said President Clinton, "to send a message to those who engage in state-sponsored terrorism ... and to affirm the expectation of civilized behavior among nations."<sup>1</sup>

Following is a list of prominent foreign individuals whose assassination (or planning for same) the U.S. has been involved in since the end of the Second World War. The list does not include several assassinations in various parts of the world carried out by anti-Castro Cubans employed by the CIA and headquartered in the U.S. Do all these countries now have the right to bomb Langley?

- 1949 Kim Koo, Korean opposition leader
- 1950s CIA/Neo-Nazi hit list of numerous political figures in West Germany
- 1955 José Antonio Remon, President of Panama
- 1950s Chou En-lai, Prime Minister of China, several attempts on his life
- 1950s Sukarno, President of Indonesia
- 1951 Kim Il Sung, Premier of North Korea
- 1957 Gamal Abdul Nasser, President of Egypt
- 1955 Jawaharlal Nehru, Prime Minister of India
- 1958 Brig. Gen. Abdul Karim Kassem, leader of Iraq
- 1959, 1969-72 Norodom Sihanouk, leader of Cambodia
- 1950s-70s José Figueres, President of Costa Rica, two attempts on his life
- 1961 Patrice Lumumba, Prime Minister of the Congo (Zaire)
- 1961 Gen. Rafael Trujillo, leader of Dominican Republic
- 1963 Ngo Dinh Diem, President of South Vietnam
- 1960s, late 1980s Fidel Castro, President of Cuba, many attempts on his life
- 1960s Raúl Castro, high official in government of Cuba
- 1965-66 Charles de Gaulle, President of France
- 1965 Pierre Ngendandumwe, Prime Minister of Burundi
- 1965 Francisco Caamaño, Dominican Republic opposition leader
- 1967 Che Guevara, Cuban leader
- 1970-73 Salvador Allende, President of Chile
- 1970 Gen. Rene Schneider, Commander-in-Chief of Army, Chile
- 1970s General Omar Torrijos, leader of Panama
- 1972, 1988-89 General Manuel Noriega, Chief of Panama Intelligence
- 1975 Mobutu Sese Seko, President of Zaire
- 1976-79 Michael Manley, Prime Minister of Jamaica
- 1982 Ayatollah Khomeini, leader of Iran
- 1983 Miguel d'Escoto, Foreign Minister of Nicaragua
- 1984 The nine *comandantes* of the Sandinista National Directorate
- 1985 Sheikh Mohammed Hussein Fadlallah, Lebanese Shiite leader (80 people killed in the attempt)
- 1981-87 Muammar Qaddafi, leader of Libya
- 1990-91 Saddam Hussein, leader of Iraq

William Blum is the author of *The CIA, A Forgotten History: U.S. Global Interventions Since World War 2* (London, N.J.: Zed Books, 1988).  
1. Alexander Cockburn, "An Attack As American As Apple Pie," *Los Angeles Times*, June 29, 1993.



# Israel, Iran, the U.S., & the Bomb

**"The war in Lebanon is the first stage in our conflict with Iran." — Efraim Shah, Knesset member<sup>1</sup>**

## Israel Shahak

**F**or years, stonewalling in the face of mounting and eventually irrefutable evidence, Israel denied all reports that it had built a nuclear bomb. Now openly acknowledged, its substantial nuclear arsenal forms a grim backdrop to the Middle East political landscape.

While the role of these weapons is discussed in Israel, the implications of the world's fifth largest nuclear force are all but ignored in the U.S. In the country whose taxpayers foot the bill for the Israeli program, the media spotlight only the "threat" of nuclearization by other states in the region. And in Israel, this threat and the national commitment to remaining the only nuclear state in the region, are touted as justifications for developing and possibly using the bomb.

Israel Shahak is Emeritus Professor of Chemistry at the Hebrew University in Jerusalem. Photo: Bill Biggart/Impact Visuals. Israeli soldier on the Israel-Jordan border  
1. *Yediot Ahronot*, July 30, 1993.





On April 17, 1992, Deputy Chief of Staff, General Amnon Shahak-Lipkin, indicated how far he believed Israel was prepared to go to prevent Middle East nuclear proliferation.<sup>2</sup> "I believe that the State of Israel should from now on use all its power and direct all its efforts to preventing nuclear developments in any Arab state whatsoever." The interviewer then asked the General: "Does this imply the need for violent means as well?" Shahak-Lipkin barely couched his answer: "In my opinion, all or most means serving that purpose are legitimate." Clearly, the deputy chief of staff was not discounting an Israeli nuclear first strike.

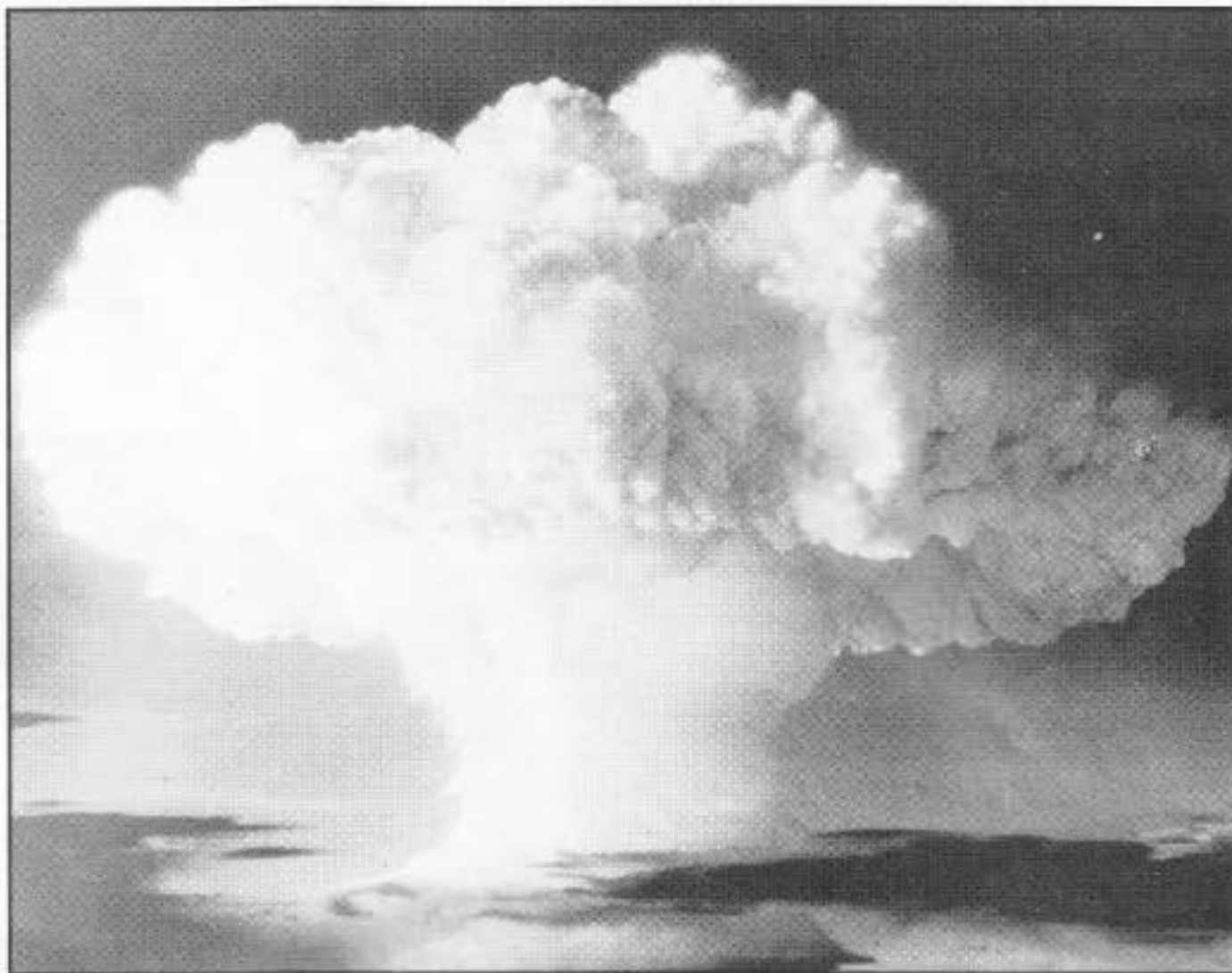
Currently, the most likely target for a preemptive Israeli strike, either conventional or nuclear, is not Arab but Iranian. There is widespread speculation backed by some hard evidence that Israel is forming anti-Iranian coalitions and prodding the U.S. — either by itself or through its allies — to destabilize Iran and/or take out its developing nuclear capability. Israel's new anti-Iranian policy can only be understood in the broad context of its hegemonic aims.

### Grand Strategy

The scope of the new Israeli grand strategy was set forth by General Shlomo Gazit (reserves), a former Military Intelligence commander. The area of military intelligence is regarded as the most important component of the intelligence community. It is composed of Mossad (which operates outside Israel and the areas it physically occupies), Shabak (the General Security Service which operates within Israel in the Occupied Territories) and in the "security zone" of South Lebanon, and Military Intelligence (which operates as a branch of the army). The Military Intelligence commander reports to the prime minister on behalf of all groups on matters of strategic importance.

After his retirement, Gazit became a member of the prestigious Yaffe Center for Strategic Studies at Tel Aviv University. His frequent articles on intelligence and strategy are remarkable for their lucidity and their highly placed sources.

Israel's main task has not changed at all, and remains of crucial importance. The geographical location of Israel at the center of the Arab-Muslim Middle East predestines Israel to be a devoted guardian of stability in all the countries surrounding it. Its [role] is to protect the existing regimes, to prevent or halt the processes of radicalization, and to block the expansion of fundamentalist religious



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zealotry. Israel has its "red lines" which, precisely because they are not clearly marked or explicitly defined, have a powerful deterrent effect by virtue of causing uncertainty beyond its borders. The purpose of these "red lines" is to determine which strategic developments or other changes occurring beyond Israel's borders can be defined as threats which Israel will regard as intolerable, to the point of feeling compelled to use *all* its military power for the sake of their prevention or eradication. [Emphasis added.]

In Gazit's view, by "protecting" all or most Middle Eastern regimes, Israel performs a vital service for "the industrially advanced states, all of which are keenly concerned with guaranteeing the stability in the Middle East."

In the aftermath of the disappearance of the USSR as a political power with interests of its own in the region, a number of Middle Eastern states lost a patron which guaranteed their political, military and even economic viability. A vacuum was thus created, with the effect of adding to the region's instability. Under such conditions, the Israeli role as a strategic asset in guaranteeing a modicum of stability in the entire Middle East, far from dwindling or disappearing, was elevated to the first order of magnitude. Without Israel, the West would have to perform this role by itself, when none of the existing superpowers really could perform it, because of various domestic and international constraints. For Israel, by contrast, the need to intervene is a matter of survival.<sup>3</sup>

2. Yaakov Erez and Immanuel Rozen, *Ma'ariv*, April 17, 1992.

3. Shlomo Gazit, *Yediot Ahronot*, April 27, 1992.



# What Could Trigger an Israeli Strike

Under the new grand strategy, former Military Intelligence chief Shlomo Gazit distinguishes three processes of radicalization "which qualify as intolerable" to Israel:

- **Acts of anti-Israeli terrorism originating from the territory of another state.** Retaliation can be not only in Israel's immediate defense, but also in the "best interest" of an Arab government. Gazit reasons: "An Arab government allowing a terrorist organization to run free, creates a monster which sooner or later will turn against it. If it does not take steps to halt any development hostile to itself and to reestablish its total control, it will eventually cease to rule its own country."
- **"Any entry of a foreign Arab military force onto the territory of a state bordering Israel,"** i.e., Jordan, Syria, and Lebanon. Again, Gazit ascribed Israeli motivation to benevolent concern: Such an incursion also poses "a threat to the stability of the regime of the country thus affected, and sometimes also to the latter's sovereignty. There can be no doubt, therefore, that the Israeli red line which deters and prevents entries of foreign Arab military forces to countries neighboring with Israel, is also a stabilizing factor which in fact protects the existing states and regimes in the entire Middle East."
- **"Threats of a revolt—whether military or popular—which may end up bringing fanatical and extremist elements to power in states concerned."** These threats arise not out of the Arab-Israeli conflict, but because the regimes of the region "find it difficult to offer solutions to their

socio-economic ills." Nonetheless, any revolt could destabilize Israel's relations with the affected regime. "The prime examples of such a red line are the concerns for the preservation of Israel's peace treaty with Egypt and of the *de-facto* peaceful cooperation between Israel and Jordan. In both cases, Israel's red lines communicate to its neighbors that Israel will not tolerate anything that might encourage the extremist forces to go all the way, following in the footsteps of either the Iranians to the east or the Algerians to the west."

Insurrectionary potential, according to Gazit, is the most important factor and is meant to legitimate the extension of "Israeli influence" well beyond the Arab countries neighboring it. "Indirectly, it also radiates onto all other states of our region. In almost all of them, some kind of radicalization is going on, except that the radical forces are deterred from pushing all the way out of fear that their maximalism might prompt Israel to respond. Although no one would say so openly, I am positive that the regime of President Mubarak benefits from such an Israeli deterrence. If power [in Egypt] is ever seized by Islamic extremists, they will at once have to decide whether to recognize the peace treaty with Israel as binding them or not. It will be a most difficult decision for them. If they do recognize the treaty, they will compromise their own ideology. And if they don't recognize it, they will at once have a war for which they cannot possibly be ready."<sup>1</sup>

1. All quotes from: Shlomo Gazit, *Yediot Ahronot*, April 27, 1992.

## An Iranian Bomb

So far, Israel has abjured the use of nuclear weapons. But that stated reluctance — like that of the U.S. — is tactical rather than moral or absolute. That Israel is prepared to go to war to defend its perceived interests is beyond doubt; that it has a large arsenal of nuclear weapons and a sophisticated delivery system is also well-established; but the circumstances that would promote a decision to use the bomb are less clear. Some Israeli experts see the expected nuclearization of the Middle East in general and of Iran in particular as sufficient threat to justify any prophylactic action.

Although Israeli censorship on the subject is strict, the subject was discussed at a symposium held by the Yaffe Center. One of the speakers, Knesset Member Efraim Sneh (Labor), who had served in intelligence-related jobs in the

army, is widely regarded as one of the best informed strategic experts. He declared:

[I]t is still possible to prevent Iran from developing its nuclear bomb. This can be done, since Iran threatens the interests of all rational states in the Middle East. We should therefore do all we can to prevent Iran from ever reaching nuclear capability. Israel cannot possibly put up with the nuclear bomb in Iranian hands. If the Western states don't do what is their duty, Israel will find itself forced to act alone, and will accomplish its task *by any means considered suitable* for the purpose. [Emphasis added.]<sup>4</sup>

4. Yo'av Kaspi, "Hotam," *Al Hamishmar* (Friday Supplement), May 21, 1993.



Israel is unlikely to overthrow the present regime, to win a military victory with conventional weapons, or to convince Iran to abandon plans for nuclearization. Given this military context, Sneh's pronouncement can be seen as a veiled threat to strike at Iran with nuclear weapons.

Nor are Israeli leaders confident that intelligence can accurately assess the progress of nuclearization programs or even know when and if a bomb and delivery system are on line. Aware of past failures of intelligence units,<sup>5</sup> Sneh warned:

If, despite all our precautions, we are confronted with an Iran already in possession of nuclear installations and in mastery of launching techniques, we would be better off if the explosive charge of the Israeli-Arab conflict is by then already neutralized through signing peace treaties with states located in our vicinity — concretely with Syria, Jordan, and the Palestinians. We would also be better off if, until that time, we succeed in building alliances with Middle Eastern states interested in fighting Islamic fundamentalism. It would be good for us if all sane states of this region unite to resist all forces of radicalism.<sup>6</sup>

Also attending the symposium was General Avihu Ben-Nun (reserves), who served as commander of the Israeli Air Force until the end of 1992. Before and during the Gulf War, he was one of the most important advocates of Israeli intervention into that war who agreed with Sneh that preventing nuclearization of Iran might not be possible. Even if an Israeli-Iranian war broke out after Iran nuclearized, he reassured, the threat of Israeli retaliation — considered feasible by the Arab world — was a powerful deterrent against an Iranian first strike. And if that was not sufficiently discouraging, the U.S. would launch a nuclear retaliation. "But Iran will also have another reason for refraining from using its atomic bomb against Israel," Ben-Nun continued, "the fear of destroying the Islamic holy sites in Jerusalem. The holy sites are our best deterrent." This statement, considered too crass even for an Israeli general, was ridiculed by some commentators.<sup>7</sup>

Policy expert Shay Feldman of the Center for Strategic Studies at Tel Aviv University concurred. Although Iran is now trying to reactivate two nuclear reactors built under the Shah, "the Iranian leaders will not behave irrationally enough ...[to] risk the total devastation of Iran that would result from an Israeli [nuclear] retaliation." Feldman blames Iran's current level of nuclear technology largely on Israel's short-sighted covert support — in defiance of the U.S. — for the



Sanderson

Shah's nuclear program. "If not for the Khomeinist revolution," he argues, "Iran would have already been at a very advanced stage of nuclearization." Reviewing the status of other countries, Feldman presumes that: Pakistan already has nuclear weapons; Egypt and Libya, despite renouncing their nuclear ambitions still retain technical potential, and thus remain "a mild threat" to Israel; Syria presents an "even milder" threat; Iraq's nuclear capability has been destroyed; and Jordan and Saudi Arabia have no nuclear potential. Apart from Iran, then, Feldman asserts that only Algeria poses a "serious" nuclear threat to Israel.<sup>8</sup>

### Israeli Army Defines New Strategy

Nuclear policy makers and political analysts such as Ben-Nun, Sneh, and Feldman are cognizant of and strongly influenced by changes taking place within the Israeli army. According to Shlomo Aharonson, a veteran expert on Israeli nuclear strategy with close establishment connections, the old and "deeply entrenched strategic doctrine" guiding the Israeli army was developed in the early 1950s by Yigal Allon, the most distinguished commander in the 1947-49 war. It aimed at winning a smashing victory in the shortest possible time. Under this old doctrine, Aharonson contends, Israel needed nuclear weapons because "Allon conceived of the Arabs as irrational, barbarous, and cutthroat characters, in contrast to us, [who are] shaped by 'humanistic traditions.'" Consequently, Aharonson explains, "Israel should always be the first to attack in order to conquer territories and then to offer to cede some of them as a bargaining chip to attain peace. But the whole thing was bound to recur again and again." Although Allon — perhaps restrained by his friendship with Iranian secret police commanders — didn't define Iranian "nature," he probably joined other Israeli strategists in regarding them as no better than the Arabs.<sup>9</sup>

(continued on p. 60)

5. The inability of intelligence to predict accurately Saddam Hussein's incursion into Kuwait is often cited as one of the numerous failures of Israeli intelligence.

6. Yo'av Kaspi, *op. cit.*

7. *Ibid.*

8. *Ibid.*

9. Shlomo Aharonson, "Ha'olam Haze," *Ha'aretz*, April 21, 1993; and Aluf Ben, *Ha'aretz*, April 25, 1993.



# Together Again: The U.S. and Salvadoran Militaries

Mike Zielinski

What do Somalia, St. Louis, and El Salvador have in common? They're all current sites for U.S. Army "humanitarian aid" missions. El Salvador is the latest beneficiary of the Pentagon's civic action programs as 450 U.S. soldiers embark on training exercises with the Salvadoran military.

On July 21, 1993, El Salvador's Foreign Ministry unveiled plans for the largest ever U.S.-Salvadoran joint military exercises.<sup>1</sup> Operation "Strong Roads" will involve up to 500 U.S. troops and extend to August 1994. The joint maneuvers are intended to craft a benign image for a military associated not with building schools but bombing them.

## Finding a Role for the Military

The exercise comes at a time when the role of the armed forces is a subject of intense debate in El Salvador. The 1992 Chapultepec Accords, which ended a decade of civil war, mandated that the military stop acting as an internal security force and only be deployed to repel external attack. The Accords also ordered a sharp reduction in troop numbers and the removal of officers with a history of human rights abuses.

Throughout the past year, however, the military and its patrons in the ARENA (Nationalist Republican Alliance) government have sought to strengthen the army's role by redefining its mission to include the war on drugs, fighting crime, and engineering projects serving the civilian population.

On July 16, the government mobilized "anti-crime" patrols involving up to 3,000 soldiers. The Catholic Church and human rights organizations denounced this move as antithetical to the spirit of the Peace Accords which call for a gradual demilitarization of the country.<sup>2</sup>

"Strong Roads" will bolster that image of civil service. According to the Pentagon's press office, the first phase, running from mid-August until December 1993, will deploy U.S. troops, primarily drawn from the Army, Navy, Air Force, and reserve units to work with Salvadoran military units on programs such as digging wells and building schools.

ARENA is hoping that "Strong Roads," coupled with the army's renewed use as a security force, will facilitate a

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*The joint maneuvers are intended to craft a benign image for a military associated not with building schools but bombing them.*

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re-militarization of Salvadoran society as well as repair the armed forces' battered public image. The armed forces have been on the defensive ever since the release of the United Nations Truth Commission's report in March. The U.N. concluded that the army bore responsibility for the

vast majority of human rights abuses over a ten-year period, ranging from the 1981 massacre of more than 400 peasants at El Mozote, to the 1989 murder of six Jesuit priests, their housekeeper and her daughter.

## Influencing Elections

The timing of "Strong Roads" may aid ARENA's re-election campaign. Nationwide elections are slated for March 1994, with every elected office — from municipal councils to the presidency — on the ballot. By providing impoverished communities with potable water and schools, ARENA is casting itself in a benevolent role and using its incumbency to eclipse the opposition.

The exercises allow the Pentagon to maintain an active presence in Central America even though it's no longer pitted against an insurgency in El Salvador. U.S. military leaders continue to cultivate close ties to their Salvadoran counterparts. General George Joulwan, head of the Panama-based U.S. Southern Command, visited El Salvador on July 22 to meet with the new leadership of the Salvadoran armed forces. He promised the prompt release of \$11 million in military aid, which was suspended in February pending a purge of human rights abusers from the officer corps. Joulwan was presented with a gold medallion for "distinguished service" by Defense Minister Humberto Corrado and informed the Salvadoran High Command that the U.S. military "will accompany you in your transition as true friends."<sup>3</sup>

Throughout the war, the Pentagon and its Salvadoran allies attempted to win "hearts and minds" with civic action programs which served as prototypes for "Strong Roads." From "San Vicente '83" to "United to Reconstruct" in 1986, these programs failed to erase the army's murderous image. With "Strong Roads," the U.S. and Salvadoran governments are prepared to give it another try, demonstrating that for the military there is life after the end of the Cold War. •

Mike Zielinski is political director of the Committee in Solidarity with the People of El Salvador, CISPES.

1. *El Rescate Human Rights Department Report from El Salvador*, July 19-26, 1993.

2. "Newsbriefs," *Proceso* 571, July 14, 1993.

3. *El Mundo*, July 23, 1993.





# SOA—School of Assassins

Vicky A. Imerman

**O**n March 15, 1993, the United Nations Truth Commission released its Report on El Salvador and cited over 60 Salvadoran officers for ordering, executing, and concealing the major atrocities of ten years of civil war. At least 75 percent of the censured officers trained at the U.S. Army School of the Americas (SOA) during their military careers. School commandant José Alvarez denied the involvement of SOA graduates in war crimes and called critics "ignorant" and "uninformed."

One of this nation's most secretive schools, SOA was established in Panama in 1946 to promote regional stability and train U.S. soldiers in jungle warfare. It evolved to teach low intensity conflict, psychological operations (PSYOPS), and intelligence gathering to some of the worst dictators, war criminals, and violators of human rights in the hemisphere. In their heydays of military abuse, Bolivia in the '60s, Nicaragua (under the Somozas) in the '70s, and El Salvador in the '80s were all primary clients of the SOA.

As the notoriety of its alumni grew, the school earned the nickname "Escuela de Golpes," or "School of Coups." In 1984, when Panama finally ousted SOA (under a provision of the Panama Canal treaty), the Panamanian daily *La Prensa* added another *nom de guerre*: "The School of Assassins."<sup>1</sup>

Four years after relocation to Fort Benning, Georgia, SOA established a "Hall of Fame" to honor

distinguished alumni. Honorees were flown from Latin America for award ceremonies attended by local VIPs, military brass, and occasional Congress members. "If [SOA] held an alumni association meeting," said Rep. Martin Meehan (D-Mass.) in 1993, "it would bring together some of the most un savory thugs in the hemisphere."<sup>2</sup>

For its premier Hall of Fame inductee, SOA chose ex-Bolivian dictator Hugo Bánzer Suárez. Having come to power in a violent coup, he developed the "Bánzer Plan" in the 1970s which "brutally suppressed tin miners and church workers"<sup>3</sup> and effectively silenced critics of his regime. Other recipients included: a drug trafficker (Gen. Humberto Regalado Hernández), a notoriously corrupt dictator (Gen. Policarpo Paz García), and a chief of intelligence who oversaw the assassination of thousands of suspected dissidents (Gen. Manuel Antonio Callejas y Callejas).

## Low-Intensity Conflict

Today, with a basic budget of \$5.8 million, SOA trains 1,800 soldiers. Currently there are no Salvadoran or Guatemalan trainees, but officers from those nations serve as guest instructors. The \$5.8 million budget does not include salaries or living allowances (up to \$25,000) paid to Latin American officers attending the Command and General Staff College (CGSC). Both guest instructors and CGSC officers are encouraged to bring family members, who receive post privileges normally reserved for U.S. soldiers and their families.<sup>4</sup>

Vicky A. Imerman is co-director of the School of the Americas Watch. SOA Watch was established in 1991 to counteract the lack of information available to the general public on the U.S. Army School of the Americas and its role in U.S. military policy in Latin America. For more information contact: SOA Watch, P.O. Box 3330, Columbus, GA 31903, Tel. 706/682-5369.

1. Edward Cody, "U.S. Army Closing School for Latin Officers in Panama," *Washington Post*, September 24, 1984.

2. Letter to Defense Secretary Les Aspin, August 6, 1993.

3. Douglas Waller, "Running a 'School for Dictators,'" *Newsweek*, August 9, 1993, p. 37.

4. Clint Claybrook, "Pressure mounts for reforms at School of the Americas," *Columbus Ledger-Inquirer*, August 8, 1993, p. B1.



# U.S. Army School of the Americas' "Finest"

## ARGENTINA

**Gen. Leopoldi Galtieri:** President, 1981-82. Oversaw the last two years of six-year "dirty war" when an estimated 30,000 suspected dissidents were tortured, disappeared, and murdered.

## BOLIVIA

**Gen. Hugo Bánzer Suárez:** Dictator, 1971-78. Developed the "Bánzer Plan" to silence outspoken members of the Church; the plan became a blueprint for repression throughout Latin America. Ascended to power through a violent coup; inducted into the U.S. Army School of the Americas Hall of Fame (SOA-HOF), 1988.<sup>1</sup>

**Gen. Guido Emilio Sandoval Zambrana:** Commanding general, Army; SOA-HOF, 1991.

## COLOMBIA

**Gen. Luis Eduardo Roca:** Chief of Staff, Colombian Army; SOA-HOF, 1991.

**Gen. José Nelson Mejía:** Colombian Army; SOA-HOF, 1989. In 1991, Generals Roca and Mejía, in thanking the U.S. Congress for \$40.3 million in anti-narcotics aid, pledged \$38.5 million to a counterinsurgency campaign in northeast Colombia, where narcotics are neither grown nor processed.<sup>2</sup>

**Gen. Rafael Samudio Molina:** Former defense minister; SOA-HOF, 1988.

**Gen. Manuel J. Guerrero Paz:** Former defense minister; SOA-HOF, 1988.

**Gen. Manuel Alberto Murillo González:** Commander, Army; SOA-HOF, 1991.

**Gen. Hernan José Guzman Rodríguez:** Commander-in-chief, Army; SOA-HOF, 1993.

## DOMINICAN REPUBLIC

**Gen. Tommy Rafael Fernández Alarcón:** deputy secretary of state, Armed Forces; SOA-HOF, 1993.

**Gen. José Emilio Guzman Fernández:** Army chief of staff; SOA-HOF, 1993.

**Gen. Hector Garcia Tejada:** secretary of state, Armed Forces; SOA-HOF, 1993.

## ECUADOR

**Gen. Jorge Humberto Felix Mena:** SOA-HOF.

**Gen. Jorge Enrique Asanza Acaiturri:** SOA-HOF.

## EL SALVADOR

(not cited by UN Truth Commission)

**Col. José Mario Godínez Castillo:** Cited by Salvadoran Non-Governmental Human Rights Commission (NGHRC) for involvement in 1,051 summary executions, 129 tortures, 8 rapes — 1,288 total victims.<sup>3</sup>

**Col. Dionisio Ismael Machuca:** Former director, National Police; former member of SOA cadre (Panama). Cited by NGHRC for involvement in 318 tortures, and 610 illegal detentions.<sup>4</sup>

## GUATEMALA

**Gen. Manuel Antonio Callejas y Callejas:** Under President Romeo Lucas Garcia, was senior intelligence officer in charge of choosing targets for assassination. Later served as chief of staff, Guatemalan Armed Forces under Vinicio Cerezo, while Gramajo was defense minister;<sup>5</sup> SOA-HOF, 1988.

**Gen. Hector Gramajo:** Retired defense minister. He held key military and government positions; archi-

The core of SOA's curriculum, Low-Intensity Conflict (LIC), is a deliberately misnamed warfare strategy<sup>5</sup> designed to maintain U.S. military influence in this hemisphere without using (or losing) large numbers of U.S. troops.<sup>6</sup> Instead, U.S. military personnel, aided by a handful of guest instruc-

tors from various SOA client nations, train surrogate Latin American and Caribbean soldiers in "dirty little war" techniques, including: counterinsurgency and urban counterinsurgency; irregular warfare and commando operations; sniper and sapper techniques; combat arms and special operations; and military intelligence and PSYOPS.<sup>7</sup> SOA graduates who go home and adequately perform their duties can look forward to returning to the SOA again and again, to receive more training, more free vacations to Disneyland, an assignment as guest instructor, or induction into the SOA Hall of Fame.

5. Two years ago, in an effort to further sanitize LIC's image, the Defense Department tried to rename it "Peacetime Engagement." Charles A. Krohn, "It's Time to Expand U.S. Special Operations," *National Defense*, November 1991, p. 43.

6. Paul Timm, "It's better to talk about differences than to fight," *Columbus Ledger-Enquirer*, November 11, 1989. Timm quotes former U.S. Training and Doctrine Command commander General Maxwell Thurman: "It [is] far better to train Latin American soldiers up here at Fort Benning than to have American soldiers down there doing the fighting in Latin America."

7. U.S. Army School of the Americas, 1992 Course Catalog.



tect of government/military strategies which essentially legalized military atrocities throughout the '80s. He was praised in 1992 by then-SOA Commandant José Feliciano as a "brilliant" individual, undeserving of criticism by human rights groups. In an address to the 1991 SOA Command and General Staff College graduation class, he warned them to beware of "non-believers in military affairs," lest the "dragon of communism" crush democracy in Latin America.<sup>6</sup>

**Gen. Edgar Godoy Gaitán:** Ex-chief, Presidential Military Guard. Believed to have ordered 1991 assassination of anthropologist Myrna Mack.<sup>7</sup> Attended a military intelligence course at SOA in Panama, 1975 and the 47-week Command and General Staff College course at SOA, Fort Benning, 1987.

**Gen. José Domingo García Samayoa:** Ex-defense minister; accused participants of the GHRC's 1992 Washington, D.C. symposium on torture of "conveying disinformation concepts," and of being enemies of democracy in Guatemala.<sup>8</sup>

#### HAITI

**Major Joseph-Michel François:** Police chief, Haiti. Played an important role in the Haitian coup that ousted President Aristide. François received training at Fort Benning.<sup>9</sup> SOA has admitted training Haitian soldiers prior to 1986, during the Duvalier regime. The specifics of that training and names of trainees are unknown.

#### HONDURAS

**Gen. Humberto Regalado Hernández:** Ex-commander, Armed Forces. Strong links to Colombian drug trafficking; SOA-HOF, 1988.

**Gen. Policarpo Paz García:** Dictator, 1980-82. Ruled during 100-150 disappearances; SOA-HOF, 1988.<sup>10</sup>

#### PANAMA

**Gen. Manuel Antonio Noriega:** Ex-president and CIA asset, is now in a U.S. prison, SOA 1965, 1967.

#### PARAGUAY

**Gen. Eumelio Bernal:** Former chief of staff, Paraguayan Armed Forces; SOA-HOF, 1990.

#### PERU

**Gen. Enrique López Albuja Trint:** Former defense minister; SOA-HOF, 1988.

**Gen. Jorge Zagarra Delgado:** Ex-commanding general, Army; SOA-HOF, 1990.

**Gen. Pedro Edilberto Villanueva Valdivia:** Commanding general, Army; SOA-HOF, 1991.

#### URUGUAY

**Gen. Carlos P. Pacheco Gelabert:** Ex-commander, Air Force; SOA-HOF, 1990.

#### VENEZUELA

**Gen. Ellodoro Antonio Guerrero Gómez:** Ex-defense minister, 1988.

**Gen. José Ángel Marchena Acosta:** Former commander, Armed Forces; SOA-HOF, 1988.

**Gen. Alfredo Antonio Sandoval Hernández:** Ex-commander, Armed Forces; SOA-HOF, 1988.

**Gen. José María Troconis Peraza:** Ex-commander, Army; SOA-HOF, 1990.

1. W. Stevens Ricks, "Hall of Fame at Army School of Americas Honors 2 Former Dictators," *The Atlanta Journal-Constitution*, October 30, 1988.

2. Ruth Conniff, "Colombia's Dirty War, Washington's Dirty Hands," *The Progressive*, May 1992.

3. *El Salvador Venciera*, publication of Twin Cities cisrs, February 1993.

4. *Ibid.*

5. Guatemala Human Rights Commission, Washington, D.C.

6. Daniel Maloney, "SOA recognizes 1991 staff college graduates," *The Bayonet* (SOA organ), January 3, 1992; Dennis Bernstein and Larry Everest, "Hector at Harvard," *Z Magazine*, July/August 1991.

7. GHRC, mailing, March 1993.

8. Dorothy Vidulich, "Human-rights activists say criticisms by Guatemalan officials typical, unfounded," *National Catholic Reporter*, December 4, 1992.

9. Anne Marie O'Connor, "A little-known soldier becomes Haiti's police chief: Major received military training in Fort Benning, Ga.," *Atlanta Journal-Constitution*, October 11, 1991.

10. Ricks, *op. cit.*

In this way, SOA functions not only as a training and indoctrination center, but also as a reward to select soldiers for a job well done. The perk street runs both ways according to Joseph Blair, a U.S. Army officer who taught logistics at SOA from 1986 to 1989. "American faculty members readily accepted all forms of military dictatorship in Latin America and frequently conversed about future personal opportunities to visit their new 'friends' when they ascended to military or dictatorial power some day."<sup>8</sup>

8. Joseph Blair, "SOA Isn't Teaching Democracy," *Columbus Ledger-Enquirer* (Georgia), July 20, 1993, p. A6.

The implications extend beyond the personal. Like any elite school, SOA builds an old boys network. When it comes time for the U.S. to choose one or another faction in an internal power dispute abroad, it has highly placed allies whose politics it helped shape and whose loyalty it claims.

#### The Smiling Face of Oppression

SOA not only teaches the craft of propaganda, it practices it. SOA's rigorously promoted programs such as "Nation-Building" and "Internal Defense and Development" paint a benign facade on training here at home and U.S. military activities abroad. The short-term, public agenda of these



## SOA Alumni Named in UN Truth Commission Report on El Salvador

On March 15, 1993, the United Nations Truth Commission Report on El Salvador was released, citing dozens of Salvadoran officers for involvement in atrocities committed during a decade of war. SOA Watch compared Truth Commission findings with lists of SOA graduates obtained from the National Security Archive in Washington, D.C., and discovered SOA graduates cited in the pages of the U.N. Report.

Often those soldiers who had received the most U.S. training were involved in the worst atrocities. Training provided them both before and after their involvement in war crimes included counterinsurgency and urban counterinsurgency courses; irregular warfare and commando operations courses; combat arms and special operations courses; and military intelligence and psychological operations courses.

**3 Officers cited  
2 SOA graduates**

**Romero Assassination:** March 24, 1980: Archbishop Oscar Romero. The beloved champion of the poor was assassinated while celebrating mass in San Salvador.

**5 Officers cited  
3 SOA graduates**

**Murder of Churchwomen:** December 2, 1980: Three U.S. nuns and a Catholic layworker were forced out of their van just outside San Salvador by members of the Salvadoran National Guard, who raped and killed them.

**3 Officers cited  
3 SOA graduates**

**Sheraton Hotel Murders:** January 3, 1981: Three labor leaders were assassinated at the Hotel in San Salvador by Salvadoran National Guardsmen.

**3 Officers cited  
2 SOA graduates**

**El Junquillo Massacre:** March 12, 1981: Salvadoran soldiers massacred the citizens of the village and raped the women and children under 12.

**12 Officers cited  
10 SOA graduates**

**El Mozote Massacre:** December of 1981: Hundreds of unarmed civilians were massacred, their corpses mutilated, burned, or left to rot on the ground.

**6 Officers cited  
3 SOA graduates**

**Las Hojas Massacre:** February 22, 1983: Soldiers of the Jaguar Battalion murdered sixteen civilians and burned their corpses.

**7 Officers cited  
6 SOA graduates**

**San Sebastian Massacre:** September 21, 1988: Members of the Jiboa Battalion captured ten civilians, interrogated and then killed them.

**27 Officers cited  
19 SOA graduates**

**Jesuit Massacre:** November 16, 1989: Six unarmed Jesuit priests, their housekeeper, and her teen-age daughter were massacred at the priests' residence in San Salvador.

"internal defense and development" projects includes bridge-building and medical aid tasks. Their long-term effect — like that of LIC as a whole — is to expand the bounds of military authority, to entrench the military in traditionally civilian areas, and to incorporate military propaganda and intelligence networks throughout civilian society.

While trainees absorb highly sophisticated propaganda and psychological operations techniques, they are initiated into the U.S. political line. In a course on "The Church in Latin America" (not listed in SOA course catalogs), trainees learn that Liberation Theology is a subversive doctrine promoted by the allies or dupes of subversives. This simplistic approach reinforces the convenient belief that advocates of

social, military, or political reforms are as dangerous to the state as armed guerrillas.

Even more simplistic is the only human rights component of the school's Sniper course: If, during their final exams, trainees fire on civilian targets, they fail the course.<sup>9</sup> In fact, when Honduran and Colombian soldiers ran through "urban-combat exercises using blanks in their weapons half the time, the village priest [played by a U.S. Army chaplain] is killed or roughed up."<sup>10</sup>

9. Daniel Maloney, "Media Day: Local reporters briefed on SOA's future," *The Bayonet*, May 29, 1992, p. S1.

10. Douglas Waller, "Running a 'School for Dictators,'" *Newsweek*, August 9, 1993, p. 37.



## Human Rights

Former SOA commandant, José Feliciano, who oversaw the training of hundreds of Salvadoran soldiers during his tenure, staunchly maintained that the human rights records of SOA client nations were beyond reproach. "A nation that wants to receive [SOA training]," he said, "has got to have a strong human rights record. We talk to people in terms of values."

Major Jaime F. Llinet, apparently without irony, described some of those values. PSYOPS campaigns, he said, were "a way of advancing human rights. ... We teach [SOA] students another way of fighting a war against anarchy. PSYOPS is a more civilized way of doing things, plus it helps avoid unnecessary violence." Major Llinet also boasted: "One reason so many Iraqis are alive today is because PSYOPS convinced them to surrender."<sup>11</sup>

The current SOA commandant, Colonel José Álvarez, maintains the same line. "[SOA] probably does more in the area of teaching human rights than any other school in the world," he insists.<sup>12</sup> The Colonel must have been on leave every time the 1989 murder of six Jesuit priests, their housekeeper, and her 16-year-old daughter, in El Salvador was mentioned. The Truth Commission implicated 27 soldiers and the Salvadoran courts convicted four in that massacre; 19 of the soldiers were SOA graduates.<sup>13</sup> Yet even after the U.N. report made headlines, Álvarez maintained unabashed ignorance of what is undoubtedly the most publicized case in recent memory of human rights abuse involving SOA graduates. "Álvarez said that as far as he knows, no School of the Americas graduate has ever been formally charged in connection to the killing of the priests and the women who died with



Impact Visuals

Members of the 1989 Salvadoran army from left, first row (seated): Col. Inocente Orlando Montano; Gen. René Emilio Ponce; second row (seated): Leopoldo Herrera Amaya; Manuel Antonio Rivas Mejía; Col. Guillermo Benavides; third row (standing): Lt. Col. Leon Linares; Col. Arnoldo Majano; Col. Julio Cesar Grijalva; Col. Carlos Armando Avilés. Benavides and Montano (1970 SOA graduate) were central to the planning and attempted cover up of the Jesuit massacre. Rivas (1970, '75 SOA graduate) was also an integral part of the cover up.

them in El Salvador. He said he doesn't know if the accused had been students."<sup>14</sup>

## Shut the Doors

Thus the U.S. Army School of the Americas — by honing the military skills and rewarding the atrocities of this hemisphere's most brutal armed forces — undermines the human rights it purports to instill. At best, the low intensity conflict it teaches maintains the *status quo* in nations with large, impoverished populations plagued by unfair labor practices, poor living conditions, and lack of education; at worst, it is a tool for achieving and legitimizing fascism.

As the U.N. Truth Commission Report on El Salvador clearly demonstrates, SOA training does not alter the patterns of traditionally abusive militaries — it only makes the alumni more mindful of hiding their atrocities. Shutting the doors on the U.S. Army School of the Americas would save millions of dollars — and perhaps thousands of lives. •

11. Daniel Maloney, "PSYOPS course exercise tests practical knowledge," *The Bayonet*, May 7, 1993, p. S1.

12. Interview, WRBL-TV (Columbus, Georgia CBS affiliate), June 14, 1993.

13. Appendix D, *Interim Report of the Speaker's Task Force on El Salvador* (the Moakley Report), April 30, 1990.

14. Clint Claybrook, "Commandant defends School of Americas: Calls protestors' charges 'ridiculous,'" *Columbus Ledger-Enquirer*, June 15, 1993, p. B-1.





By 1987 "our guys simply stopped reporting...up through the chain [because] they were reporting things they felt were absolute violations, and were absolutely wrong, and they were not seeing any action taken. ...It was up to the State Department to arrest those people or to investigate those at fault.. ...You couldn't go up to people and say '40 persons got themselves whacked over here because they were thinking of forming a workers' union. And the landowner is not into that at all, so he asked his buddy the Colonel to send a squad over and take care of the problem.' [If] you did that, it was real easy to find yourself on the receiving end of a grenade, or a bomb, or a rifle bullet. So...our guys...reported the information and then just saw it disappear into that great void."

*An ex-adviser in El Salvador says senior U.S. officials covered up the combat role of U.S. advisers and hid a pattern of human rights violations by the Salvadoran army.*

## Green Berets in El Salvador

Frank Smyth

**G**reg Walker was a U.S. military adviser in El Salvador, and he is not happy with the people who assigned him there. Walker is the director of Veterans of Special Operations, which, he says, represents an estimated 4,500 U.S. advisers, pilots, medics, and other personnel who served in El Salvador during the 12-year war. But, according to Walker, since the Pentagon denies that U.S. military personnel in El Salvador served in a combat situation, it refuses to give them proper compensation or recognition. That refusal means lower pay, no combat military decorations such as the Purple Heart, and less chance of promotion. Walker, a Green Beret who volunteered for El Salvador, says that's not fair.

Fairness is a different kind of question for those Salvadorans who survived the 75,000 killings and the consistent

pattern of human rights abuses that marked the U.S.-sponsored war. What bothers Walker, however, is that although this spring's U.N. Truth Commission Report on El Salvador laid the blame for the majority of these human rights crimes on U.S.-backed Salvadoran Armed Forces, U.S. personnel are being tarred with the same brush. Walker served as a Green Beret Army Special Forces adviser in El Salvador from 1982 to 1985 when the Salvadoran military, after substantial U.S. training, committed some of its the worst violations.

Walker maintains that although he and other U.S. advisers secretly took part in combat, they regularly reported extrajudicial killings and other crimes to the U.S. Embassy and their military superiors. Those senior officials there and in Washington routinely covered them up.

President Clinton has ordered the CIA, Pentagon, and State Department to pursue an "expedited review" of all documents relevant to 32 specific violations in El Salvador in response to the U.N. report.

Frank Smyth has covered El Salvador since 1987. He is currently writing a book on U.S. policy and intelligence in the war for Westview Press. This telephone interview took place on August 10, 1993. Photo: Terry Allen. After family members were killed by the Salvadoran army, women share grief.



**Frank Smyth:** What was your mandate while you were in El Salvador? What exactly were you doing?

**Greg Walker:** Well, the mandate of the entire military assistance program, if there was a single mandate, was to reorganize, restructure, and reform the Salvadoran army.

**FS:** Were there any restrictions placed upon you and other personnel about what it was you were and were not allowed to do in terms of participating in combat or going into the field?

**GW:** Well, the restrictions and the limitations essentially were placed upon us by the United States military through the Congress. For example, where did the 55 advisers limit come from? That limitation did not come from Congress. That limitation came from the military itself when they sent a colonel to the country in the very early '80s to reassess what was going to be necessary to upgrade the military and to keep America's involvement at a minimum.

**FS:** You mean Fred Woerner?

**GW:** Fred Woerner, Joe Stringham, any number of officers went down there. ...Beginning in 1983, there were always no more than 55 U.S. military special operations advisers, as per the mandate in-country. But, at the same time, especially with the Army Special Forces advisers, we are trained in a multitude of different military skills such as communicators, medics, etc. So you saw a lot more highly trained, highly skilled special operations advisers in El Salvador because they were slotted into those standard MILGROUP staff slots. ...So, probably at any one time, we had as many as 300 conventional and soft advisers working in-country at any one time, carrying out mobile training teams. Quite a bit more than when you were given the big 55 number. But you just have to understand the mechanics; it was no secret, it was just that people simply did not explore and know the right questions to ask.

**FS:** What about military limitations?

**GW:** The limitations that were placed upon the military advisers in the very early stages were that they could not carry long guns or assault rifles or things like that, and were restricted to essentially carrying only a sidearm, which at the time was either a .45 or a 9mm pistol. It was typical of the State Department policy process that if we didn't look like we were in a war, then the other side would take it that we weren't really there to be in a war.

...In 1982, when I first went in the country, we were provided with long guns, or assault rifles, by Salvadoran commanders who refused to be responsible for our safety out in the "training areas" or in the field, or going between the cuartel [military base] to the capital, [or] any kind of transportation or movement whatsoever. Simply because

they knew what the reality of the war was for both themselves and for us out there. At that time I was working out of Sonsonate, and we were pulled out because of the Las Hojas massacre, and moved over to the Caballo Rio where the cavalry was down the street from Atlacatl [Battalion]. Certainly in 1983, when [Lt. Cmdr. Al] Schaufelberger was killed, we were at that time given permission through the MILGROUP commander by the State Department, the Embassy, whoever you want to call it, to be fully armed.



Terry Allen

**November 1989.** During the offensive, the Salvadoran army killed a suspected guerrilla, burned the body in a San Salvador neighborhood, and ordered that no one bury it.

Now [*New York Times* correspondent] Lydia Chávez, are you familiar with her? Lydia was probably one of the most gutsball reporters that I ever met down there, and the morning after Schaufelberger was killed, Lydia ran into myself and the Special Forces captain over at Estado Mayor [military headquarters]. We had two visiting military dignitaries with us, we were armed with an M-16 shotgun and submachine guns, and Lydia to her great credit, asked the question as she was staring at us in our vehicles. "What happened last night? Are you guys armed any differently?"

Well, we had managed to stuff everything that was short and ugly under the seat because we saw Lydia coming. Lydia had a good reputation for ferreting things out like that, but one individual who should have known better, but didn't, left his M-16 fully exposed on the back seat with a magazine in it. And being good Special Forces troopers, we immediately lied to the media and said, "No, although they just killed the director of security for the entire embassy, there's no difference at all in our armed attitude." And Lydia, with her photographer there, clearly saw that rifle





Courtesy of NACLA

**Troops trained by the U.S. were responsible for some of the worst massacres and human rights violations of the war.**

and simply told us, "You guys take care of yourselves" and did not take pictures, which she could have, and did not report that. But we were fully armed immediately after Schaufelberger was killed.

As far as contact, in 1984, during the elections, we were under continuous fire from the FMLN because we were manning reporting sites all over the country in all the nice places like El Paraíso and Usulután. I was in Usulután then, and we took fire in the cuartel every other night. In '84, you have to understand that the military base at Palmerola in Honduras served as an aviation launch platform for U.S. Air Force aircraft to include AC-130 gunships which flew rescue missions for us specifically, so that if we got hit in the cuartels or had to get out of the cuartels and go into an escape and evasion mode and had to get picked up either by rotary aircraft or be covered by the AC-130s.

**FS: Did the officers or military personnel involved get combat credit for these actions, but it was not made public? Is that correct?**

**GW:** No, they don't get credit if it's not acknowledged that it's combat. At the same time, we had advisers in El Salvador who were being paid hostile fire pay as early as 1981.

**FS: Where did people come under fire in El Salvador, inside of cuartels or in the field?**

**GW:** U.S. advisers down there came under fire most in the cuartels. As a matter of fact, some of the major battles that U.S. advisers were involved with took place in cuartels, but we came under fire in the field as well, and quite obviously came under fire in the urban areas, as Schaufelberger's experience dictates. The thing that is forgotten here, thanks in part to the lack of coverage by the American media, is that El Salvador was a country that was taking part in a guerrilla war, and anybody who studies anything about guerrilla warfare knows that there are no safe havens. So we were subject to fire at any time, any place.

For example, where do you train people to do fire and maneuver things? Where do you train people how to patrol? Where do you train people how to use anti-tank weapons, anti-bunker weapons and things like that? In a place like El Salvador, you have to train them outside of the cuartel area, which means you have to go to the field, and you have to specifically find areas if at all possible where there are no or minimal inhabitants, which is difficult because it's so intensely populated. Well, in other words, you're out exactly where the guerrillas are and they have a tendency to really kind of get a little P.O.'d when their property is invaded by folks like us.

**FS: Were all these contacts with the enemy outside cuartels reported to MILGROUP commanders in San Salvador?**

**GW:** In every incident, to my knowledge, there was a very strict reporting system and it went up the chain of command up to the U.S. MILGROUP.

**FS: When I was in El Salvador, the American Embassy only admitted, as late as right before the offensive in 1989, that only on three occasions had U.S. military advisers come under fire.**

**GW:** There is a big difference in what the U.S. military advisers, who were conventional Army, Air Force, Marine, as well as special operations forces representing all the services, were required and trained to do, what they actually did, and what the State Department or the Embassy did with that information afterwards. So if that was your experience, all I can tell you is they did a very good job, because three times under fire — that's pretty good. ...That's clearly not only a misrepresentation of the facts, but it's a lie.

**FS: When these individual members of the military testified before Congress and gave reports underestimating the level of engagement with the enemy, were they acting on their own volition, or on orders from superiors?**

**GW:** ...Was there an orchestrated, very carefully structured program of downplaying, misleading, misrepresenting, not giving the right answer if the precise question isn't asked? Quite obviously, the answer is, yes, there was.



**FS:** From your perspective, why wouldn't you want to let this rest? What is it that you feel the American military personnel in El Salvador are being cheated out of because of this policy?

**GW:** Well, we're not letting it rest because it's not the right thing to do....In today's political and military politics, it would appear to be a very simplistic answer, but in a nutshell, approximately 4,500 to 5,000 American military personnel served in El Salvador over a 12-year period. To my knowledge, and certainly we've heard from a great many folks, and from what we've been able to see, we know that we were serving in a war. We had friends who were both wounded and killed in that war. We had a vital commitment that was handed to us to go down there and do the best job possible under extremely difficult diplomatic and wartime constrictions and restraints, and we did the job. To turn around and see that effort sullied by a formal attitude that there was no war...dishonors everything we thought we were representing and involved in. And certainly, a [current] example of that is the U.N. human rights report, which essentially is not being clarified by the proper authorities in the government and is making the military personnel that were involved down there look somewhat like we were involved in things and training and teaching things that were not at all honorable, and that is not the case. What are we being cheated out of? Our just and due acknowledgment for a job well done.

**FS:** In terms of levels of engagement, are we talking dozens or hundreds?

**GW:** ...[O]ver a 12-year period of time, [that] number is in the high hundreds to the low thousands. And I consider that a round fired where there was American military personnel in the area is coming under fire. [For example] in San Salvador when they were blowing the telephone and the power poles...you were under fire. So I would say, in that instance, American military personnel came under fire on an everyday occurrence.

**FS:** Have you any estimates, or perhaps the figures, on how many U.S. military personnel were killed in El Salvador?

**GW:** Fifteen were killed.

**FS:** You made a point earlier about human rights and some of the revelations that came out in the U.N. Truth Commission Report and you mentioned that this report somehow suggests that American military personnel were involved in things that cast them in a bad, dishonorable light. Could you explain what you meant by that?



Terry Allen

**Angry workers meet in the hastily repaired FENASTRAS union hall in October 1989. The bomb, which human rights groups charged was planted by the Salvadoran army, killed 13 people including leader Phoebe Elizabeth Velasquez, pictured above.**



**GW:** With respect to human rights, this needs to be made real clear, and this is one of the things that really is a sticking point for most of us who served down there, both Special Forces and conventional.

We were mandated...to identify, to gather information, to root out those that possibly were involved in human rights violations, ...who were actually taking part in death squad activities, in massacres, in any of the things that were mentioned in that report.

American advisers made every attempt to do this, often at risk to themselves, and in fact, we were, by 1984 and '85, finding ourselves targeted by the extreme right for this kind of activity, as well as by the guerrillas who were ticked off about our military involvement. Now, it was real easy to accept the guerrillas trying to take us out, but it was a little difficult to accept that the folk we were supposed to be supporting in some cases were out for our scalps as well.

**FS:** And you were encouraging the Salvadorans not to commit violations according to the U.S. military policy on human rights?



# War in Periods of Peace

**D**uring the Iran-Contra hearings, House chief counsel John Nields asked Lt. Col. Oliver North about a line in his notes referring to a "delicate stage of transition from 'blank' run operation to 'blank'-run."

**Nields:** Well you put in some blanks, you said "blank" in two places, there's nothing classified about either of those words and one of them is CIA.

**North:** Well.

**Nields:** And the other is Southern Command.

The operation referred to was El Salvador. In his interview, Walker shed some light on what North meant about a "delicate stage of transition" from a CIA- to Southern Command-run operation.

**Greg Walker:** The mandate for the Central Intelligence Agency upon its creation in, I believe, 1947 is that the Agency has responsibility for military operations during periods of declared peace. In other words, they are responsible and indeed can direct, run, operate in these kinds of conflicts totally legally. During those times of declared peace,

Special Forces are made available, by law, to the Agency, which is why Special Forces has always been the advisory arm of the Central Intelligence Agency. That is no big secret. The only time that that changes is a period when war is no longer considered to be a peace time.

I know this seems contradictory, war being undertaken during periods of peace, but that's when the transition goes from the Agency's direct control to the American military's direct control and when that happens, Special Forces, if they have been working with or under the auspices of the Agency, they flip-flop back under the control of the military and that I think is what you're seeing in that testimony.

The early stages of the war were very much Agency-directed and -oriented, and as the war and our commitment expanded, as our assets in Panama through the U.S. Southern Command and in Honduras became more and more and more involved, control was taken out of the hands of the Agency and turned back over to the formal military through the United States Southern Command. •

**GW:** Well, you can't lump the entire Salvadoran military into the same pot.... We were to identify those Salvadoran military officers who were, in fact, very concerned with changing that policy, and were not taking part in it, but were part of a system that had been involved in that kind of thing for years. And that's endemic to that entire region. That's historical fact, like it or not.

So we'd identify the senior officers within the military structure that you would want to preen, and to cultivate, and to bring to the forefront so you could replace the ones that were tainted, and at the same time, we were charged with training those young officers coming out of the officers school, the lieutenants, and the new and emerging Salvadoran non-commissioned corps, in the entire human rights process.... [R]eporting did take place, and when my particular team was pulled out of Sonsonate, and pulled back in 1983 after Las Hojas was discovered, and those 70 peasants were discovered on my particular rifle range, we were held in check for ten days as a bargaining chip by the State Department to try to force the military structure to cough up the personnel or the people responsible.<sup>1</sup>

1. The mostly indigenous peasants were executed at the Las Hojas farming cooperative in February 1983. An arrest warrant was issued for Col. Araujo in 1987, but never carried out. Col. Araujo was subsequently cleared of all charges in a blanket amnesty issued by Pres. José Napoleón Duarte in October 1987.

Now, what seems to be the bone of contention here is not that American military personnel weren't doing a hell of a job as far as gathering information, intelligence, and turning it over to the people responsible for evaluating it and taking further action, but how much of that was shared when questions were asked by Congress or by human rights groups or by reporters. That is the big stumbling block as far as El Mozote was concerned. When that was brought to the forefront by the media, the State Department turned around and just about said it absolutely didn't happen, [it] couldn't find any evidence, you're just trying to muck up this whole thing for us down here. As we find out now, it most certainly did happen.

**FS:** *Were there any instances, for example El Mozote<sup>2</sup> or Las Hojas, or other cases of particular violations, where you were aware of information, or you personally or MILGROUP was aware of massacres that were then not*

2. The 1981 El Mozote massacre, in which the Salvadoran army killed hundreds of unarmed villagers, was reported by Ray Bonner (*New York Times*) and Anna Guillelmoprieto (*Washington Post*). Embassy and State Department officials denied the incident and after considerable pressure, Bonner was transferred off the Central America beat and eventually left the *Times*. Eleven years later, the U.N. Truth Commission report corroborated the accounts of the massacre and the guilt of the Salvadoran army.



*made public? Or human rights violations or practices by members of the army which led to human rights violations which then were covered up in terms of specifics?*

GW: We were aware of any number of things, not only on the Salvadoran Armed Forces side of the house, but on the FMLN's side of the house. We photographed Salvadoran soldiers who were shot down at San Sebastian, San Vicente, Puente de Oro, the other side of San Miguel. Both sides committed some pretty heinous acts all in the name of the common good, I guess. The only way to answer that, I guess, is to say that we did a hell of a lot of reporting, and by 1987, from what I've been able to ascertain from letters I've been sent by people down there, after a while, our guys simply stopped reporting. And the reason that they stopped reporting it up through the chain is that they were reporting things that they felt were absolute violations, and were absolutely wrong, and they were not seeing any action taken.

It was up to the State Department to arrest those people or to investigate those at fault. Now, the diplomats will say "You have to understand it's a long and involved process." But for somebody who's down there in the field and participating in the uncovering of these things, you see one body, or a group of bodies, and it's pretty difficult not to say, "Why can't you stop that now, with the information that we've provided for you?" And in fact, when you're being targeted by the right, when you have to watch your front as well as your back, and you're being told "Don't worry, it's been taken care of, just don't bring it up again," that takes a lot of the impetus out of the reporting. That's unfortunately human nature.

*FS: The reporting was being stopped because nothing was being done. But did earlier reporting include specifics — names, and dates, and facts?*

GW: Absolutely. As best as we could ascertain them. You couldn't go up to people and say 40 persons got themselves whacked over here because they were thinking of forming a workers' union, and the landowner is not into that at all, so he asked his buddy the Colonel to send a squad over and take care of the problem. Because if and when you did that, it was real easy to find yourself on the receiving end of a grenade, or a bomb, or a rifle bullet. And so it was something that had to be done very carefully, very slowly, and our guys put themselves at tremendous risk to accomplish that, and then reported the information and then just saw it disappear into that great void.

*FS: Specifically, to whom was this information reported?*

GW: Any kind of combat field info all went up your immediate chain of command. If I was, say, at Usulután and got something like that, I would report it up one step above myself — in most cases to U.S. MILGROUP. From there it would be channeled through the deputy commander, MILGROUP commander, and from there, directly to the Am-

bassador, ...[and] directly from the military, right into the hands of those charged with conducting our foreign policy in that country.

*FS: Then it presumably would have gone on to Washington?*

GW: And from there it would have gone directly on to Washington. And that's a good point, too. Washington wanted to know what was going on in El Salvador, and did indeed know on an almost real time basis. In 1984, when — had I had a tape recorder, I would have loved to have taped this one — the American advisory element in El Paraíso came under fire. An A C-130 gunship was scrambled from Honduras, and flown over El Paraíso to help pinpoint those guerrilla actions. This was all being monitored by the MILGROUP and the Embassy. Southern Command was called immediately and came on the line as well, and then a line went up to the Joint Chiefs of Staff. And it was real interesting listening to all of these parties all over asking, "How are these five Americans, where are they, and what's going to happen to them?" The interest level in

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*[I]t was real easy to accept the guerrillas trying to take us out, but... a little difficult to accept that the folks we were supposed to be supporting ...were out for our scalps as well.*

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Washington was really high. They knew at any time exactly what it was that was going on, where we were, and what we were doing, throughout the entire war.

*FS: And then at a certain point, people decided it wasn't worth trying to get this information, nothing was being done, and it was in fact dangerous to get it?*

GW: It was very dangerous to get it, and it was just like you were feeding reports into this big report file, and if something was being done, it was taking an enormous amount of time, or it wasn't really happening at all, because [the] bigger picture was intruding upon the immediacy of what you were seeing or hearing.

*FS: So your point in terms of honor of the role of U.S. military people on the ground is that it is not that the revelations of the U.N. Truth Commission aren't true. What you're saying is it wasn't the fault of the people on the ground that nothing was done; it was the fault of people higher up who didn't do anything with the information. Is that correct?*

GW: That's correct. •



# Private Prisons: Profits of Crime



Phil Smith

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*Private prisons are a symptom, a response by private capital to the "opportunities" created by society's temper tantrum approach to the problem of criminality.*

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**A**t Leavenworth, Kansas, within a perimeter of razor wire, armed prison guards in uniform supervise hundreds of medium- and maximum-security federal prisoners. Welcome to one of America's growth industries — private sector, for-profit prisons. Here in the shadow of the federally-run Fort Leavenworth Disciplinary Barracks and the Leavenworth Federal Penitentiary, the Corrections Corporation of America (CCA) runs a short-term detention facility for medium- and maximum-security prisoners. Under contract to the U.S. Marshal's Service and the Immigration and Naturalization Service (INS), the CCA Leavenworth facility is not an anomaly but part of a trend. In the last decade, from juvenile detention centers to county jails and work farms to state prison units to INS holding camps for undocumented aliens, private interests have entered the incarceration business in a big way. Where there are people detained, there are profits to be made.

Imprisonment is an ugly business under any regime, but the prospect of a privatized prison system raises difficult and disturbing questions beyond those associated with a solely state-operated prison system. It has been, after all, a common assumption that the criminalization and punishment of cer-

tain behaviors—the deprivation of physical liberty and even of life itself—are not amenable to private sector usurpation. Some of the arguments that inform this assumption are ethical, some legal, and others practical, but all are being challenged by a growing group of special interests.

## Prisons for Profit

Surprisingly, private prisons are nothing new in U.S. history. In the mid-1800s, penny-pinching state legislatures awarded contracts to private entrepreneurs to operate and manage Louisiana's first state prison, New York's Auburn and Sing Sing penitentiaries, and others. These institutions became models for entire sections of the nation where privatized prisons were the norm later in the century. These prisons were supposed to turn a profit for the state, or at least pay for themselves. Typically, privatization was limited: The state leased or contracted convict labor to private companies. In some cases, such as Texas, however, the corrections function was turned over wholesale to private interests which promised to control delinquents at no cost to the state.

As the system spread, labor and businesses complained that using unpaid convict labor constituted "unfair" competition. Of equal concern to reformers—but of less weight to politicians—was the issue of prisoner abuse under the private

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Phil Smith, who holds an M.A. from the Institute of Latin American Studies at the University of Texas, has written on Latin America and drug policy.



corrections regime. Anecdotal evidence from across the country painted a grim picture: While state officials remained indifferent or were bought off by private interests, prisoners suffered malnourishment, frequent whippings, overwork and overcrowding. A series of investigations of state prisons confirmed the tales of horror and produced public outrage.<sup>1</sup> As with anti-trust legislation and the progressive reforms which followed, public pressure impelled government regulation of private sector abuse. By the turn of the century, concerted opposition from labor, business, and reformers forced the state to take direct responsibility for prisons, thus bringing the first era of private prisons to an end.

### Three Trends Converge

But as the twentieth century stumbles to an end, the hard lessons of a hundred years ago have been drowned out by the clamor of free market ideologues. Again, privatization is encroaching ever further on what had been state responsibilities, and prison systems are the target of private interests.

The shift to privatization coalesced in the mid-1980s when three trends converged: The ideological imperatives of the free market; the huge increase in the number of prisoners; and the concomitant increase in imprisonment costs.

In the giddy atmosphere of the Reagan years, the argument for the superiority of free enterprise resonated profoundly. Only the fire departments seemed safe, as everything from municipal garbage services to Third World state enterprises went on sale. Proponents of privatized prisons put forward a simple case: The private sector can do it cheaper and more efficiently. This assortment of entrepreneurs, free market ideologues, cash-strapped public officials, and academics promised design and management innovations without reducing costs or sacrificing "quality of service." In any case, they noted correctly, public sector corrections systems are in a state of chronic failure by any measure, and no other politically or economically feasible solution is on the table.

### More Prisoners, More Money

This contemporary push to privatize corrections takes place against a socioeconomic background of severe and seemingly intractable crisis. Under the impetus of Reaganite social Darwinism, with its "toughness" on criminal offenders, prison populations soared through the 1980s and into the 1990s, making the U.S. the unquestioned world leader in jailing its own populace. By 1990, 421 Americans out of every 100,000 were behind bars, easily outdistancing our closest competitors, South Africa and the then USSR. By 1992, the U.S. rate had climbed to 455.<sup>2</sup> In human terms, the number of people in jails and prisons on any given day tops 1.2 million, up from fewer than 400,000 at the start of the Reagan era.<sup>3</sup>

1. Alexis M. Durham, III, "The Future of Correctional Privatization: Lessons From the Past," in Gary W. Bowman, *et al.*, *Privatizing Correctional Institutions* (New Brunswick, N.J.: Transaction Publishers, 1993), pp. 33-49.

2. Stanley Ostrow, "Study Shows U.S. World's No. 1 Jailer," *Austin American-Statesman*, February 11, 1992, p. A5.

3. Bureau of Justice Statistics, U.S. Department of Justice, *Prisoners in 1992*, May 1992, p. 2.

While incarceration statistics have skyrocketed, crime rates have increased much more slowly. In fact, from 1975 to 1985, the serious crime rate actually decreased by 1.42 percent while the number of state and federal prisoners nearly doubled.<sup>4</sup> The number of people sent to prison is actually determined by policy decisions and political expediency. Politicians of all stripes have sought cheap political points by being "tough on crime." They throw oil on the fire of public panic by portraying the urban underclass (read: young, black males) as predator. Ignoring the broad context of economic policies that have effectively abandoned large segments of the population, they have instituted mandatory minimum sentences, tighter or no parole schedules, and tougher "good time" regulations. Adding to the overpopulation these putative measures wrought, the War on Drugs — which aimed its frenzy at the inner city — stuffed the nation's already overcrowded prisons with a large crop of mostly African-American and Latino nonviolent offenders.

In state after state, budgets have been stretched to the breaking point by the cost of maintaining and expanding this massive correctional archipelago. In California, the nation's largest state prison system, the corrections budget increased seven-fold during the 1980s to \$2.1 billion annually at the

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*Hucksters, fast-talking developers,  
and snake-oil salesmen sell for-profit  
prisons — disguised as economic  
development — to depressed rural  
communities desperate to bolster  
budgets and local economies.*

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end of the decade—and the system was still operating at 180 percent of capacity.<sup>5</sup> The huge costs associated with the choice to deal with social problems by mass imprisonment are a fundamental part of the drift toward private prisons.

The converging trends (rampant free-marketism, higher prison population, and escalating costs) are part of a larger trend—the sharpening of Reaganite class war and the social meanness that accompanied it. The last time the U.S. faced such an influx of prisoners was after the Civil War when freed blacks, who were previously punished and controlled within the slave system, were sent to formerly all-white prisons. The present situation is not perfectly analogous, but once

4. K.M. Jamieson and T.J. Flanagan, eds., *The Sourcebook of Criminal Justice Statistics* (Washington, DC: National Institute of Justice, 1989), p. 612. Legal definitions of crime reflect the biases of those who make the laws. Corporate executives can, with impunity from criminal action, install an exploding gas tank in a car, with full knowledge that it will cause a statistically predictable number of deaths. An individual who stands on a tower and opens fire on a crowd — an act no more likely to end in murder — is up for the death penalty.

5. Todd Mason, "Many For-Profit Jails Hold No Profits — Not Even Any Inmates," *Wall Street Journal*, April 18, 1991, pp. 1, 4.



again, policy-makers faced with burgeoning and unruly minority resistance of their own making seem to have chosen a similar course: "Lock 'em up and throw away the key."

### The Business of Punishment

Punishment is not only a crucial and ever-larger state function, it is also big business. Private ownership and/or operation of prisons, while an increasingly significant part of the corrections system, represents only a fraction of the "prison-industrial complex." The cost of corrections—including state, local, and federal corrections budgets—ran to more than \$20 billion a year in the early 1990s.<sup>6</sup>

The cost of constructing enough cells just to keep up with the constant increase in prisoners is estimated at \$6 billion a year.<sup>7</sup> This figure does not address existing overcrowding, which is pandemic from city jails to federal prisons.

The public sector imprisonment industry employs more than 50,000 guards, as well as additional tens of thousands of administrators, and health, education, and food service providers.<sup>8</sup> Especially in rural communities where other employment is scarce, corrections assumes huge economic importance as a growth industry which provides stable jobs.

### Wackenhut Rent-a-Cops

**W**hile Wackenhut has been on best behavior in its push for the top spot in the private prison field, the parent company garnered much unwelcome notoriety. It provided the controversial protection for strike-breakers in the Pittston strike. Its contract with the Savannah River Site and Rocky Flats nuclear facilities brought in \$39 million in 1992, according to the company's annual report.

The company's ubiquitous presence at nuclear facilities and the role of its employees in repressing anti-nuclear demonstrations—including intelligence gathering—has made the term "wackenhuts" synonymous with rent-a-cops.

The company has resorted to "dirty tricks" against its perceived foes or those of its clients. As security provider for the Alyeska pipeline consortium, for example, Wackenhut employed unlicensed investigators and questionable methods to find and discredit environmentalist whistle-blowers within the company. •

The punishment juggernaut of the Reagan-Bush years also spawned an array of private enterprises locked in a parasitic embrace with the state. From architectural firms and construction companies, to drug treatment and food service contractors, to prison industries, to the whole gamut of equipment and hardware suppliers—steel doors, razor wire, communications systems, uniforms, etc.—the business of imprisonment boasts a powerful assortment of well-organized and well-represented vested interests.

Privatized prisons, then, are not a quantum leap toward dismantling the state but simply an extension of the already significant private sector involvement in corrections. The public-private symbiotic relationship was well-established long before 1984, when CCA first contracted with the INS to operate detention centers for illegal aliens. With private firms already providing everything from health care to drug treatment, the private management of entire prisons was a natural progression, especially given the tenor of the times.

### Prison Privateers

The growing private prisons industry—several dozen companies contracting with state entities to provide and/or operate jails or prisons—is oligopolistic in structure. CCA and Wackenhut Corrections Corporation dominate the upper tier, control more than half the industry's operations, and run 29 minimum- and medium-security facilities with more than 10,000 beds.<sup>9</sup>

Beneath the big two is a tier of lesser players: a cluster of smaller regional companies, such as Kentucky-based U.S. Corrections Corporation and Nashville-based Prisor; and small corrections divisions of international concerns, including construction giant Bechtel Corporation.

The boom has created a shadier realm of speculators ready to turn a quick profit from the traffic in convicts. Compared to the big three, these smaller companies are undercapitalized, inexperienced, understaffed, and are more likely to fail eventually. Run by hucksters, fast-talking developers, and snake-oil salesmen, they sell for-profit prisons—disguised as economic development—to depressed rural communities desperate to bolster their budgets and local economies. The pitch is simple: Prisons are overcrowded! Build a prison and the prisoners will come to you! You'll reap the benefits in terms of jobs and increased tax revenues!

Reality is a bit more complex. Quirks in the federal tax codes remove exemptions for prison bonds if more than ten percent of prisoners are out-of-state, if state prison officials are reluctant to have their prisoners housed out-of-state, or if large cities with severe overcrowding are unwilling or unable to pay to transport local prisoners hundreds of miles. In short, in the trade in convict bodies, supply and demand don't always match. Prisons built on a speculative basis are a risky venture—at least for the towns or counties involved; the speculators take their money off the top.

6. J.J. Dilulio, Jr., "Prisons for Profit?" *Commentary*, March 1990.

7. Charles H. Logan and Charles W. Thomas, "The Development, Present Status and Future Potential of Correctional Privatization in America," in Bowman, *op. cit.*, p. 216.

8. Julie Bennett, "Private Prison Industry Booms in the South; Northern Labor Lobby Fears Loss of Jobs," *Houston Chronicle*, September 7, 1992, p. 4GM.

9. Gail DeGeorge, "Wackenhut Is Out to Prove That Crime Does Pay," *Business Week*, December 17, 1990, pp. 96-97.



## CCA Business As Usual

**F**or the most part, when the private prison industry exceeds the bounds of law and order, it abuses standards of corruption and influence-peddling rather than prisoners. CCA, for example, has been linked to possible corrupt practices over its cozy relationships with state and local officials in its home state, Tennessee.<sup>1</sup> The U.S. attorney in Nashville is investigating charges of bribery or kickbacks surrounding a million dollar contract award to CCA to operate the South Central Correctional Center in Pikeville.

Suspicion was aroused by the discoveries that CCA was significantly underbid by U.S. Corrections Corporation and that CCA original shareholders were influential state and local politicians, including current Governor Ned McWherter; Honey Alexander, the wife of former Governor Lamar Alexander; and Alexander's insurance commissioner, John Neff.<sup>2</sup> Although McWherter and Ms. Alexander divested their company stock in 1985 to avoid conflict of interest charges, the relationship between CCA and high state officials remains very friendly. It was Governor McWherter's administration that ramrodded the entire privatization scheme that resulted in the disputed contract.



CCA Annual Report

**CCA founders T. Don Hutto, Thomas W. Beasley and Doctor R. Crants, smiling through charges of kickbacks, bribery and political chicanery.**

CCA's "scratch my back" relationship with public officials is also apparent at the Silverdale Workhouse, the first prison it managed. After Hamilton County Commissioner Bob Long voted to approve CCA's proposal, his pest control company was awarded a CCA contract. When Long later left his government post, he was hired by CCA to lobby his former fellow commissioners on its behalf.<sup>3</sup> •

1. J.M. Keating, Jr., *Seeking Profit in Punishment: The Private Management of Correctional Institutions* (Washington, D.C.: American Federation of State, County, and Municipal Employees, 1985), p. 40.

2. Phil Williams, "Private Prison Company Under Investigation By U.S.," *Nashville Tennessean*, May 24, 1992, p. 2B.

3. *Ibid.*

## Wackenhut

Historically, this bottom tier has been the locus of most of the publicized problems and abuses. But although these bottom-feeders attract "60 Minutes"-style scandal of banal corruption, it is in the top tiers that the most serious potential for abuse exists.

Wackenhut, founded by former FBI official George Wackenhut in 1954, is the largest and best known, as well as the oldest and most diversified. From its beginnings as a small, well-connected private security firm, Wackenhut has grown to a global security conglomerate with earnings of \$630.3 million in 1992.<sup>10</sup> Prison management is only the latest addition to its panoply of security and related services.

When the Coral Gables, Florida-based firm first entered the prison business in 1987, it had one 250-bed INS detention

center. It now operates 11 facilities in five states housing nearly 5,500 prisoners. Wackenhut maintains two medium-security prisons in Australia and boasts of "prospects for additional facilities in the U.S., South America, Europe, and the Pacific Rim."<sup>11</sup>

While some of its competitors in the private repression industry have specialized — Pinkerton and Burns, for example, lead the "rent-a-cop" field — Wackenhut tries to cover all the bases. Its 1991 revenues reflect its corporate diversity: The private security division contributed 43 percent; the international division, 22 percent; airport security services, 15 percent; contracts to guard nuclear installations and Department of Energy facilities, 10 percent; and, last but not least, private corrections contributed 10 percent. Given

10. Wackenhut Corporation, *Annual Report, 1991*, filed with the U.S. Securities and Exchange Commission, March 1, 1992.)

11. Valerie Ward, "The Gumshoes Are Gone," *Florida Trend Business Dateline*; Wackenhut Corporation, *Annual Report, 1992*, pp. 16-17, 22; and Lane Barnholtz, "Cells For Sale," *Prison Life*, May, 1993, p. 65.



## Pricor: What If You Built a Prison and Nobody Came?

**E**mpty private prisons and municipal coffers plague rural communities around the country.<sup>1</sup> It is in Texas, however, with the nation's highest number of private prison beds, that this combination has most clearly illuminated the shadier side of privatization. Among the more notorious of many scandals was the Pricor/N-Group scheme. Promising ample prisoners and profits, Houston-based N-Group convinced six Texas counties to issue \$74 million in bonds for for-profit prison construction to be managed by Pricor.

To ease the deal through the legal and political obstacles, N-Group owners, Houston brothers Michael and Patrick Graham, linked up with local power brokers. They hired an ex-governor's law firm, signed on a former Texas House speaker as a lobbyist, and took on the husband of the future state treasurer as bond counsel.<sup>2</sup> Covering their bets, the Grahams paid several county attorneys and financial advisers \$10,000 each to "review" the deals. N-Group's assiduous wooing of politicians paid off: The Graham brothers collected \$2.2 million in bond proceeds—but no prisoners showed up, and the counties and the bondholders are left in the lurch.<sup>3</sup>

The legal and political fallout continues. In 1991, Pricor was named as an unindicted co-conspirator by a West Texas grand jury for its role in putting together the scheme; N-Group was indicted on criminal antitrust charges. The two companies,

along with Drexel Burnham Lambert, the plan's underwriter, were sued by a group of mutual fund investors who claim to have been bilked out of \$70 million in the failed effort.<sup>4</sup>

The private prison profiteers were undeterred. Gilbert R. Walker — Pricor president from 1988 to 1990, when he left the company in the middle of the failed Texas prison deal—and David Arnspiger, a former Drexel official named in the Texas lawsuit, joined forces. As heads of GRW Corporation and Potomac Financial Group, respectively, they put together a similar deal in Walton County, Florida, in 1992. Under the joint proposal presented to Florida officials, Potomac would broker the bonds to finance a new prison in DeFuniak Springs, while GRW would manage the facility.<sup>5</sup> After exposure of Pricor's shenanigans in Texas, Florida officials declined Walker's proposal. •

1. See Rhonda Hillbery, "They Built It, But Inmates Didn't Come; Minnesota Town's Private Prison, Built to Create Jobs, Attracted No 'Clients'," *Los Angeles Times*, February 23, 1993, p. A5; Richard Witt, "Crime Doesn't Pay Off for Irwin County Jail; Rental Prison Holds Hard Lesson in Finance," *Atlanta Journal and Constitution*, February 7, 1993, p. A1; and Julie Bennett, "Builder's Cure of Private Jails Leaves Locals Ill; Promised Profits Nonexistent and Walls Come Tumbling Down," *Houston Chronicle*, September 21, 1992, p. 3SR.

2. Republican Kay Hutchinson won a June 1993 run-off with Democrat Bob Krueger for the Senate seat vacated by Lloyd Bentsen's appointment as Treasury Secretary.

3. William P. Barrett, "I Guess We Look Stupid," *Forbes*, February 3, 1992, p. 64.

4. Kyle Pope, "Prison Sellers Fail in Texas, Take Pitch East; Indictments, Suits Pursue Backers of Florida Jail Deal," *Houston Chronicle*, March 3, 1992, p. 1B.

5. *Ibid.*

the high rate of return in its corrections division — 10 percent compared to 1.8 percent overall—Wackenhut has indicated that it wants to see that area grow.<sup>12</sup>

### Corrections Corporation of America

Its closest rival is CCA, which despite its youth and small size compared to the Wackenhut empire, has emerged as the pioneer and the industry leader. But unlike Wackenhut, CCA — like the second tier companies such as Pricor, U.S. Corrections, Concepts, Inc., and Correction Management Affiliates — is almost completely dependent on private imprisonment for its revenues.

Founded in 1983 by the investors behind Kentucky Fried Chicken, CCA used the sales skills of Nashville banker/

financier Doctor R. Crants and the political connections of former Tennessee Republican Party chair Tom Beasley — co-founders of the company — to win early contracts.<sup>13</sup> The next year, CCA cut its first big deals: to operate INS detention centers in Houston and Laredo, and to run the Silverdale Workhouse (Hamilton County prison farm) in its home state, Tennessee. In the next nine years, CCA grew steadily to become the industry leader, with 21 detention facilities housing more than 6,000 prisoners in six states, the U.K., and Australia. Its profits are up by nearly 50 percent from its 1991 end-of-the-year figures.<sup>14</sup>

(continued on p. 63)

13. Williams, op. cit., p. 2B.

14. *Corrections Corporation of America. Annual Report, 1991*, filed with the U.S. Securities and Exchange Commission, March 31, 1991, pp. 2-9. The later figures are from "CCA's Under the Microscope," *Nashville Business Journal*, October 26, 1992, p. 1.

12. Wackenhut Corporation, *Annual Report, 1992*, p. 16.



# A Decade on Death Row

## a story in black and white

by Clive A. Stafford Smith

"It is obvious that white folks still run Sunflower, Mississippi," State Representative Charlie Capps wrote recently to Laurel, Mississippi mayor, Billie Dove Parker.<sup>1</sup> The small town looked well-kept, he wrote, especially the city hall.

No, no, he later insisted. His secretary had misunderstood his dictation. What he meant to say was that the *right* folks were still in control. Some people wondered what all the fuss was; in Jones County, Mississippi, it amounted to the same thing anyway.

Jones County is in the traditional South. The New South veneer that covers centuries of racism is as thin as the summer heat is thick. As you pass through landscape dotted with small churches, just as you enter Laurel, down the road from Sunflower, is a billboard erected by the Mississippi Baptist Convention. Under an unsmiling couple in wedding dress, primly holding hands in the doorway of a church, is written the admonition: "The only form of safe sex."

There is another side to the traditional South: Jones County is roughly one-third black. A few miles from Sunflower's tidy city hall, on May 24, 1993, as spring slid into the cicada-buzz of summer, Robert Gilliard went on trial for his life — again, ten years after he was originally sentenced to death. A dismal blend of politics, poverty, and racism had tied his case in a Gordian knot of appeals. In Robert's first trial in 1983, the judge was white; the prosecutor was white; the clerk of court and the bailiffs

were white. The jury, charged with dispensing equal justice under law, was as pale as death.<sup>2</sup>

With pay for public defenders, even in capital cases like Gilliard's, limited to the statutory maximum of \$1,000, few experienced litigators were rushing to his defense. Robert's court-appointed lawyer, also white, pled his client guilty to intentional murder and made a desultory appeal against the gas chamber. Robert was charged with capital murder.

A soft-spoken 40-year-old man, who never even had so much as a traffic ticket's worth of trouble before, Robert had left school at 13 to help support his family by picking cotton and tar nuts. In 1983, when he was 38, he got into the wrong crowd, was involved in an armed robbery, and was holding the gun when it went off and killed a man reputed to be a Ku Klux Klan member. Robert insists that he never intended to fire the gun. Without intent, the highest sentence would be life in prison with a possibility of parole. Three witnesses who were never called could have

testified that the gun was faulty and had accidentally gone off any number of times without anyone pulling the trigger.

It took only minutes for the jury to impose a death sentence. The victim's son wrote a letter to the paper thanking everyone — including the defense lawyer — for smoothing Robert's route to eternity. Justice was done, and done right, not like the old days. "He would've been lynched 30 years ago," said one Jones County police officer, proud of the progress.

Such happy signs of progress are everywhere. Testifying in another Mississippi case in 1992, Sheriff Lloyd Jones —

There was enough doubt  
to make the executions a travesty;  
enough racism  
to make them nearly inevitable.

Clive A. Stafford Smith has been staff attorney with the Southern Center for Human Rights in Atlanta, Georgia for nine years. He has recently become director of the Louisiana Crisis Assistance Center. Both are non-profit organizations committed to the defense of indigent persons facing the death penalty. The author was lead counsel in the recent capital resentencing trial of *State of Mississippi v. Robert Gilliard*, in Jones County, Mississippi.

1. *Clarion-Ledger*, (Jackson, Miss.) July 1, 1993, p. 2B.

2. All eight peremptory challenges used by the State to exclude jurors at Mr. Gilliard's first trial targeted blacks. See *Gilliard v. State*, 428 So.2d 576, 579 (Miss. 1983).





Just before his execution in the gas chamber, Edward Johnson (above), as a special privilege, was allowed to be with grandmother, Jessie Mae. (Right) The Death Row complex, Parchman Prison, where he died.

nicknamed "Goon" by his admirers — told me that he no longer said "nigger" to describe those he now calls "colored boys," since someone told him it was offensive.

But the old days, it would seem, were as close as sweat, and lynching, in one form or another, as real as rope. On the day Robert's jury came in, six men carried pistols into the court room. The five white men were prepared to take action if the jury decision was not to their liking; the one black, James Nix, was prepared to defend Robert against a vigilante assault. He alone was arrested and charged with carrying a concealed weapon.

The whites got to save their bullets. The jury did its job, and were it not for a series of nettlesome interventions by appellate courts, Robert would have been swiftly executed.

### White Prosecutors Pick White Juries

In the meantime, the gas chamber at Parchman did not languish. While Robert waited his turn, two of his friends, 18-year-old Edward Johnson,<sup>3</sup> and 28-year-old Leo Edwards,<sup>4</sup> were gassed as I watched. In between human executions, the prison practiced gassing on rabbits, specially-bred on the prison farm.<sup>5</sup> The rabbits, like Leo and Edward, were black.

When Leo first saw his jury, he knew he was going to die. The prosecutor — still the District Attorney in Jackson — boasted to the media that his "philosophy" for picking jurors in capital cases was "to get rid of all the blacks."<sup>6</sup> His ideal juror, he said, was a middle-aged white male with a crewcut and white socks who welds for a living.

Despite such philosophy, one less-than-ideal juror made it onto Edward's jury: a black woman. She was, however, under the strong impression that if she did not vote for Edward's death penalty, her son, then in county jail, would end up in the penitentiary. Also black was a potential witness who might have saved Edward by testifying that she was with him at the time of the crime. It was at Edward's funeral, after I had watched them die, that she



told me that a white policeman ordered her to go home and mind her own business.<sup>7</sup> I had been called in only in the frantic last three weeks to represent them. It was clear that, in both cases, there was enough doubt to make the executions a travesty; enough racism to make them nearly inevitable.

Robert, already on Death Row for four years, watched as Leo and Edward left for the gas chamber. Later he read in the paper that Marvin "Sonny" White, the "death squad" attorney general and member of the self-proclaimed Fryers' Club, had put him at the top of the list of the six men on Death Row slated to die by Christmas 1992. At the eleventh hour, however, Robert was granted a resentencing trial.<sup>8</sup>

weeks leading up to the May 21, 1987 execution of Edward Earl Johnson.

6. *Edwards v. Thigpen*, 595 F. Supp. 1271 (N.D. Miss. 1984), referring to D.A. Ed Peters' opinion.

7. This case was the subject of a subsequent BBC documentary, *The Journey*, BBC Documentaries, 1988.

8. See *Gilliard v. State*, 614 So.2d 370 (Miss. 1992). This ruling came after he had been denied post-conviction relief in state court, *In re Gilliard*, 446 So. 2d 590 (Miss. 1984), *relief denied sub nom. Gilliard v. State*, 462 So.2d 710 (Miss. 1985); as well as in federal court, *Gilliard v. Scroggy*, 847 F.2d 1141 (5th Cir. 1988).

3. *Edward Earl Johnson v. State*, 416 So.2d 389 (Miss. 1982). Edward Johnson, a black man, was convicted of the murder of a white police officer in Walnut Grove, Mississippi, in 1979.

4. *Leo Edwards v. State*, 413 So.2d 1007 (Miss. 1982), *cert. denied*, 459 U.S. 928 (1982). He was convicted of murder in the course of armed robbery in Jackson, Mississippi. There was evidence that his co-defendant, who turned state's evidence, actually fired the gun.

5. *Fourteen Days in May*, BBC Documentaries, 1987, was made in the two



### Ten Years In Death's Shadow

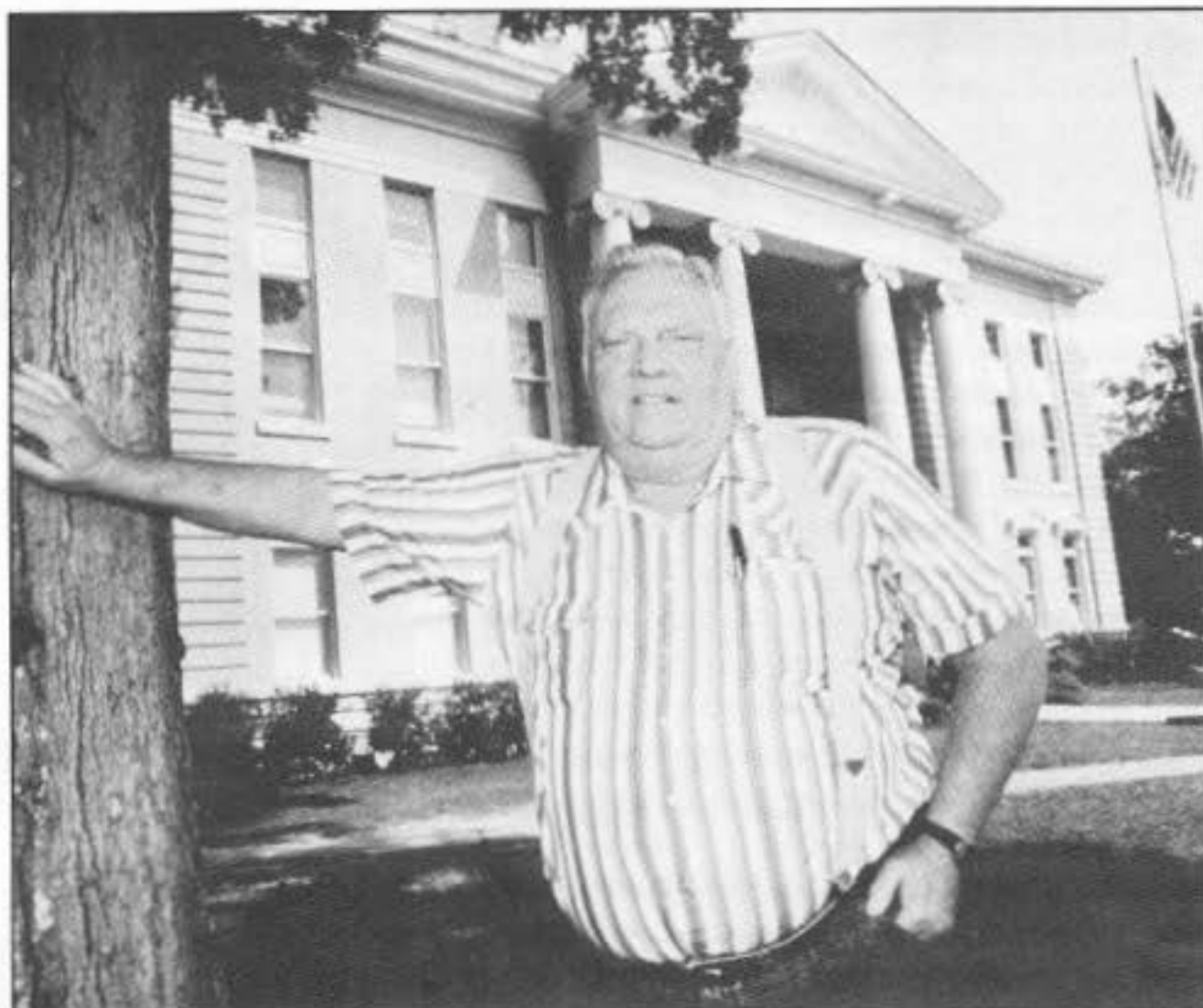
Except for the calendar on the wall, it would have been hard to see that ten years had passed since Robert's first trial. Again, the judge, all three prosecutors, the bailiffs, the clerk of courts and his courtroom deputies were white. In 1993, the only variation on the prosecution-side color scheme was the passive presence of Mississippi District Attorney Jeannine Pacific's black secretary who sat silently at the counsel table for four long days.

As white spectators were whisked through the metal detector, Carmen Castilla, my black co-counsel, was harassed on her way to the defense table. Later, as hope rose for a sentence less than death, seats in the *de facto* "blacks only" section began to fill. One white man sat there, Rev. Stan Runnels, a Presbyterian minister who firmly opposed the death penalty. The prosecutor lodged a complaint with one of Stan's deacons — it is not appropriate, she declared, for a minister to show support for a convicted murderer.

### How the System Works

There are over five hundred poor criminal defendants in Jones County each year. Since 1976, the government has spent an average of three million dollars for each successful execution. For those on the other side of the system, the public defenders, the state granted just \$32,000 per year in Jones County. Those funds — used to pay lawyers, office rent and supplies — were divided between 2 public defenders for 500

\$13,000 a year. Although smart and committed, he is just one year out of law school. Even more inexperienced was the third-year law student from the Ole Miss students-in-court program who conducted much of the defense of a mentally retarded black teenager in neighboring Forrest County. Her



Clarion-Ledger

Sheriff Lloyd "Goon" Jones no longer says "nigger" to describe "colored boys," since someone told him it was offensive.

They say that capital punishment means that those without the capital get the punishment.

defendants, including eight up for capital punishment. In Louisiana the maximum legal fee — irrespective of the crime — is \$1,000 per case. Soon, I will defend an innocent man there — so much more terrifying than defending the guilty. Having already logged 1,043 hours, the hourly rate is about 98 cents and counting...downwards.<sup>9</sup>

They say that capital punishment means that those without the capital get the punishment. The current spearhead of the Jones County Public Defenders, Anthony Buckley, is paid

first words in court were: "Your Honor, may I have a moment to compose myself? I've never been in a courtroom before."<sup>10</sup> Even after Alfred Leatherwood received the death penalty for statutory rape, the state supreme court failed to criticize her involvement in the case.<sup>11</sup>

That is the system in which Robert Gilliard got his "fair" trial. The progress over racism, so evident in his first trial in 1983, was rolling right along a decade later. When the victim's wife, who witnessed the crime, was asked to describe the two men who burst into her store, she replied: "They were two colored boys. ...One [Robert] had curly hair and big lips." (In fact, his lips were not large.) The three black jurors who made it to the jury this time around stared up to heaven; the white jurors simply stared ahead.

At the statewide public defender association meeting, when I gave a lecture on the need for thorough preparation in a capital case, I met with members of Robert Gilliard's defense team who told me they were being pushed to trial. I derogated their concern that the judge, whom I knew to be

9. *State of Louisiana v. Clarence M. Smith*, No. 296-874, Orleans Parish Criminal District Court, Section C.

10. Stephen B. Bright, *In Defense of Life: Enforcing the Bill of Rights on Behalf of Poor, Minority and Disadvantaged Persons Facing the Death Penalty*, 57 *Missouri Law Review*, 849, 859 n. 36, Summer 1992.

11. *Alfred Leatherwood v. State*, 548 So.2d 389 (Miss. 1989), reversed his conviction on other grounds.



## Delta Justice Part One

reasonable as Mississippi goes, would actually press them to trial on less than a week's notice. In order to mollify them, however, I agreed to come to court on Monday morning and help get the case put off. Certain of an extension, I prepared for jury selection only half-heartedly the night before the hearing.

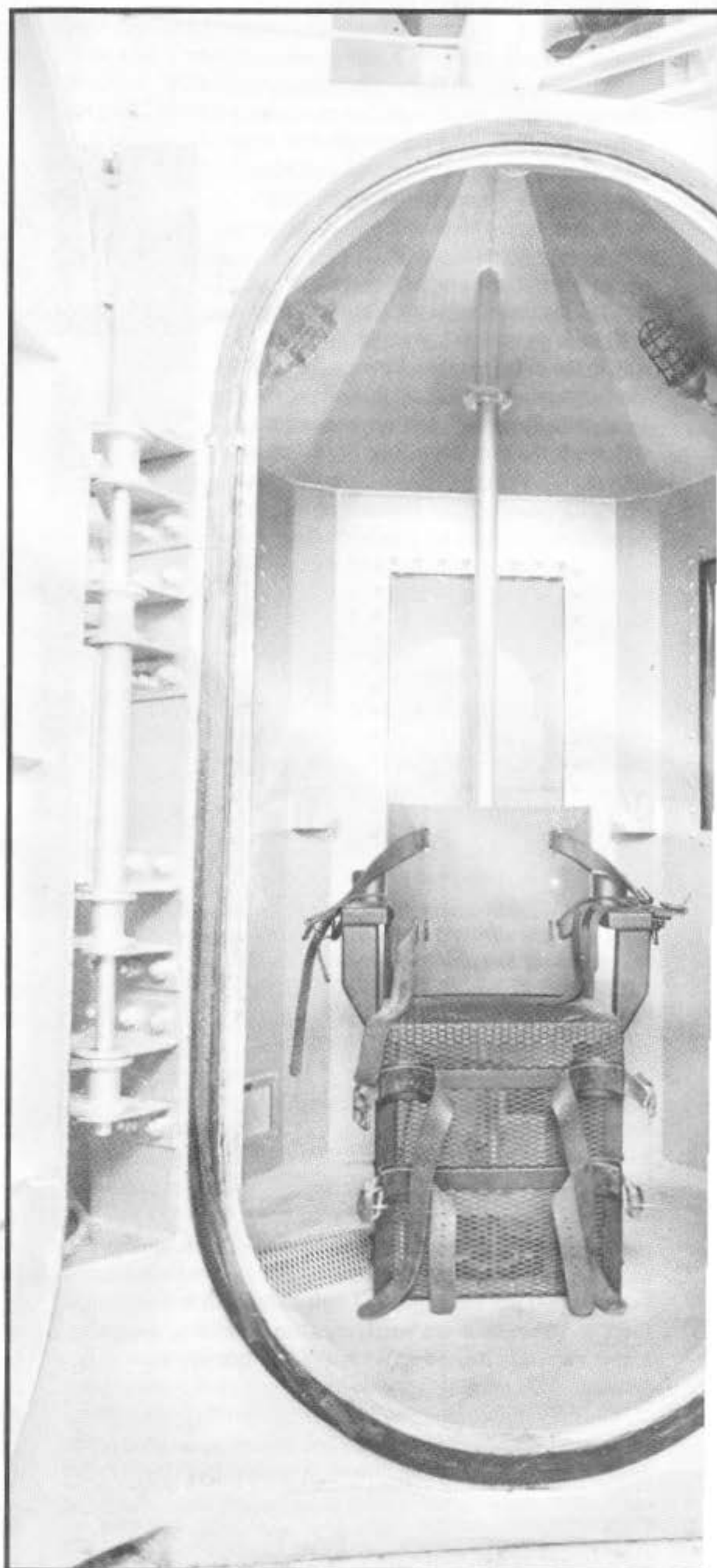
The next morning, I arrived at the judge's office just before nine, only to be told that it is not nine o'clock in Jones County until the judge arrives. When he called the court to order, I explained that I had never met Robert Gilliard, and asked for a delay. It was denied, despite additional pleas that defense witnesses, now in Nevada, Chicago and New York, would be unable to travel a thousand miles at a moment's notice to testify.

Justice for Robert Gilliard took a back seat to politics in this county where judges and prosecutors come up for election. Although they know the decision will be reversed and they agree that the legal system in Jones County is chaotic, neither will take responsibility for granting a continuance. Last year, after a prosecutor in a nearby county struck 15 consecutive blacks off the jury, I noted that the statistical probability of that happening was about one in a billion. No, the judge corrected, the probability of that particular prosecutor striking all the blacks was actually closer to one-in-one, since it happened in every case.

During my closing argument, I held up a police badge inscribed "Free State of Jones County." The slogan, I told the jurors, may have meant different things to different people in the past, but today it means only one thing: In the Free State of Jones County, each member of the jury is free to disagree with the others. One can disagree with eleven; two can disagree with ten; or, three can disagree with nine.

In the end, after ten years on Death Row and six hours of argument, one white juror voted with the three blacks to spare Robert's life rather than impose the death penalty. Eight white women preferred to see Robert die. A policeman complained that race was "injected" in the closing argument. (The defense, for example, noted that there had been no death penalty for Martin Luther King's assassin.) The officer recommended that everyone should vote with the majority, just like the good old days.

Robert was very lucky to get away with his life. Unfortunately, his case is the exception. His life, and any integrity the legal system still retains, rely on the kindness of strangers, or more accurately on the commitment of underpaid, overworked public defenders. They have bound themselves to equal justice under law — a commitment not backed, either financially or morally, by the system itself. •





# Indefensible Defenses

## working with a fatally stacked deck

by John Holdridge

"One of the most important impediments to furnishing quality defense services for the poor is excessive caseloads. All too often in defender organizations, attorneys are asked to provide representation in too many cases. Not even the most able and industrious lawyers can provide quality representation when their workloads are unmanageable. Excessive workloads, moreover, lead to attorney frustration, disillusionment by clients, and weakening of the adversarial system."<sup>1</sup>

Walk into the trial of a poor criminal defendant in Mississippi or Louisiana and everyone — the prosecutor, the judge, the court reporter — will be reasonably paid and have time to do their jobs properly. Everyone, that is, except defense counsel, who will be an underpaid and overworked public defender or court-appointed private attorney.

Public defenders in these states are burdened with oppressive caseloads two to five times higher than national standards, and are given virtually no support resources. Some cannot even afford film to photograph crime

scenes. Court-appointed private attorneys also are overworked and, because of the poor pay, have little incentive to spend much time on their court-appointed cases or to develop much knowledge of criminal law. In addition, both public defenders and private attorneys often find it impossible to convince courts to give them funds to hire experts. Is it any wonder, as Justice William Brennan once pointed out, that "indigent clients often mistrust the lawyers appointed to represent them."<sup>2</sup>

In Mississippi and Louisiana, the fault lies squarely with the state governments. They provide *no* money for the defense of poor people. In Mississippi, this responsibility is shifted completely to financially strapped counties.<sup>3</sup>

John Holdridge has been a staff attorney for three years with the Mississippi & Louisiana Capital Trial Assistance Project (formerly the ACLU Capital Punishment Project — Fifth Circuit), which seeks to improve the quality of representation received by poor capital murder defendants in Mississippi and Louisiana. He wrote the briefs in *State v. Peart* and, along with Rick Teissier, argued the case before the Louisiana Supreme Court. He also wrote the briefs and conducted the evidentiary hearing, along with Tom Lorenzi, in *State v. Higginbotham*, and is currently challenging the public defender system in Jones County, Mississippi. Photo: *Clarion Ledger*, Gas chamber. Mississippi and Georgia recently switched to more "humane" lethal injections.

1. Commentary to Standard 5-4.3 of the American Bar Association's "Standards for Criminal Justice."

2. *Jones v. Barnes*, 463 U.S. 745 (1983) (Brennan, J., dissenting), citing Burt, "Conflict and Trust Between Attorney and Client," 69 *Georgia Law Journal*, 1015 (1981); Jerome H. Skolnick, "Social Control in the Adversary System," *Journal of Conflict Resolution*, 52 (1967).

3. In 1991, six members of the Mississippi Supreme Court "suggest[ed] that the Legislature address the problem of indigent representation on a statewide basis, rather than thrust the burden on financially-strapped counties." *Mease v. State*, 583 So.2d 1283, 1284 (Miss. 1991).



In Louisiana, where indigent defense is financed by local assessments on traffic tickets, funding levels depend on how many tickets the local police write.<sup>4</sup>

In stark contrast, the state governments in both Mississippi and Louisiana provide the vast majority of funding for the prosecution of crime and pay prosecutors roughly \$70,000 a year. It is not uncommon to have three assistant district attorneys in a courtroom for every one public defender — even though public defenders in these states represent an estimated 80 to 90 percent of all criminal defendants. Moreover, prosecutors can hire experts whenever they want and routinely receive investigative assistance from city, county (in Louisiana, parish), state, and federal law enforcement agencies and crime labs.

### GUILTY UNTIL FOUND INNOCENT

U.S. criminal justice is supposed to be “an adversarial system..., not an inquisitorial one.”<sup>5</sup> Moreover, “[i]n an adversarial system, due process requires at least a reasonably level playing field at trial.”<sup>6</sup> Poor people charged with crimes in Mississippi and Louisiana soon learn the field is so skewed that they are more like distant spectators to a game in which their life or liberty is at stake.

Take the case of Henry Lee Harrison. A poor black man from Jackson County, Mississippi, he is both mentally retarded, with an IQ of 54, and paranoid schizophrenic. According to testimony at his trial, only one-tenth of one percent of the world's population suffers from this “dual diagnosis.” In 1989, Harrison was accused of raping and murdering a young white girl.<sup>7</sup> Because he was too poor to hire his own attorney, the court appointed a local public defender with an annual caseload of some 700 cases. To put that burden in context, national legal organizations, including the American Bar Association, have stated that the caseloads of full-time public defenders should not exceed 150 felony cases per attorney per year — and then only if no capital cases are included.<sup>8</sup>

“The system of indigent defense in Louisiana is beyond crisis stage; it is on the verge of collapse.”

4. In the first half of 1990, East Baton Rouge ran out of pre-printed traffic tickets for several months, throwing the public defender office into a financial crisis. (The Spangenberg Group, *Study of the Indigent Defender System in Louisiana* at 25, March 1992.) Also in 1990, the head of the Lake Charles public defender organization, which was experiencing its own financial crisis, pleaded with local law enforcement officials to write more traffic tickets.

5. *De Freece v. State*, Texas Cr. Crim. App. No. 0502-92, February 24, 1993. Texas has one of the worst indigent defender systems in the country.

6. *Ibid.*

7. He was also accused of murdering a young black girl, but that case never went to trial.

8. See Special Committee on Criminal Justice in a Free Society of the American Bar Association [ABA] Criminal Justice Section, *Criminal Justice in Crisis: A Report to the American People and the American Bar on Criminal Justice in the United States: Some Myths, Some Realities, and Some Questions for the Future*, ABA Criminal Justice Section, November 1988, pp. 42-43; National Advisory Committee Standard 13.12 (maximum of 150 felony cases per attorney per year); National Legal Aid and Defender Association, Guideline III-6. (same).

During closing argument, the prosecutor crowed that he “brought the best experts in Mississippi, brought them here because it is an important case.” Psychiatrist Henry Maggio testified that Harrison is “evil” and his undisputed mental retardation and mental illness had no bearing on his alleged behavior. Since the physical evidence did not suggest that the victim had been raped, and that finding was essential for a death sentence under Mississippi law, the prosecutor called a court-qualified expert in forensic pathology, Dr. Paul McGarry. He testified that only a penis could have caused the victim's vaginal wounds. Prosecution witness Michael West, a dentist who was qualified as a bite mark evidence expert, testified that 41 of the hundreds of marks on the victim's body were bite marks caused by Harrison's teeth — that Harrison had gone on a “feeding frenzy.” The remaining marks, he conceded, were ant bites. In its closing argument at the sentencing phase, the prosecution relied on this evidence when it roared:

Then by God the worst possible thing happened.... I can't conceive of anything worse. The animal went on a frenzy... Dr. West said Henry Lee Harrison went on an eating frenzy like a piranha attacking a piece of meat. He came from every angle, pulling kind, biting kind, and scraping kind.

Because the trial court had denied Harrison funds to hire either a pathologist or a bite mark expert, those prosecution experts went un rebutted. The prosecutor charged the jury that

Dr. McGarry's testimony compelled it to find Harrison guilty of rape because “[t]here was no evidence to the contrary.”

The jury convicted Henry Lee Harrison of capital murder and sentenced him to death. Today, he sits on Death Row awaiting the Mississippi Supreme Court's decision on

his direct appeal. Along with his direct appeal brief, his lawyers have submitted affidavits challenging two of the prosecution experts. In his affidavit, the bite mark expert stated that it is impossible to tell whether the marks on the victim are bite marks, let alone who or what caused them.<sup>9</sup> The pathologist disagreed with Dr. McGarry and labeled his testimony scientifically unacceptable because “a forensic pathologist cannot establish within a reasonable degree of medical certainty that a penis caused — and only a penis could have caused — vaginal wounds.”<sup>10</sup>

Whether or not these sworn statement — beams of truth in a darkly ominous case — come too late remains to be seen.

9. Affidavit of Dr. Harry Mincer, professor, University of Tennessee School of Dentistry.

10. Affidavit of Gerald A. Liuzza, professor of pathology, Louisiana State University.



**Mississippi: Serving at the Court's Pleasure**

It is not just poor defendants in Jackson County who play against a stacked deck. Consider, for example, the indigent defense systems in Jones and Harrison Counties.

At a recent hearing in Jones County, Mississippi, Robert Spangenberg, a nationally recognized expert on legal services for the poor, called that county's indigent defender system "the worst funded system" he has seen in his "almost 20 years of doing this work."

The county's two "part-time" public defenders are paid a miserly \$64 per felony case. On a pitiful \$32,000 annual budget provided by the county, their office handles roughly 500 felony cases per year, including capital murder cases and appeals. Neither the state nor the county provides anything else: not office space or equipment; not money to cover out-of-pocket expenses; not even the costs of taking an appeal.<sup>11</sup>

Needless to say, the public defenders, who handle about 90 percent of the county's felony cases, are overwhelmed. The first time they meet their clients — including those rotting in jail — is generally six months, and sometimes a year, after arrest. Meanwhile, important evidence is lost or grows stale, and witnesses have disappeared or forgotten critical events.

By contrast, the District Attorney's Office has at least five full-time employees, including two attorneys and an investigator, and gets to hand over its appeals to the state Attorney General's office. The Jones County DA's office budget, at \$200,000 a year (with

over \$150,000 provided by the State of Mississippi), is roughly six times larger than that of the Public Defenders'. That figure does not include the free office space and equipment provided by the county, a recent salary increase given to prosecutors by the state legislature, or the proceeds from the District Attorney's worthless check unit. The district attorney is very tight-lipped about income from this unit, but it is reputedly a gold mine.

**Harrison County, Mississippi**

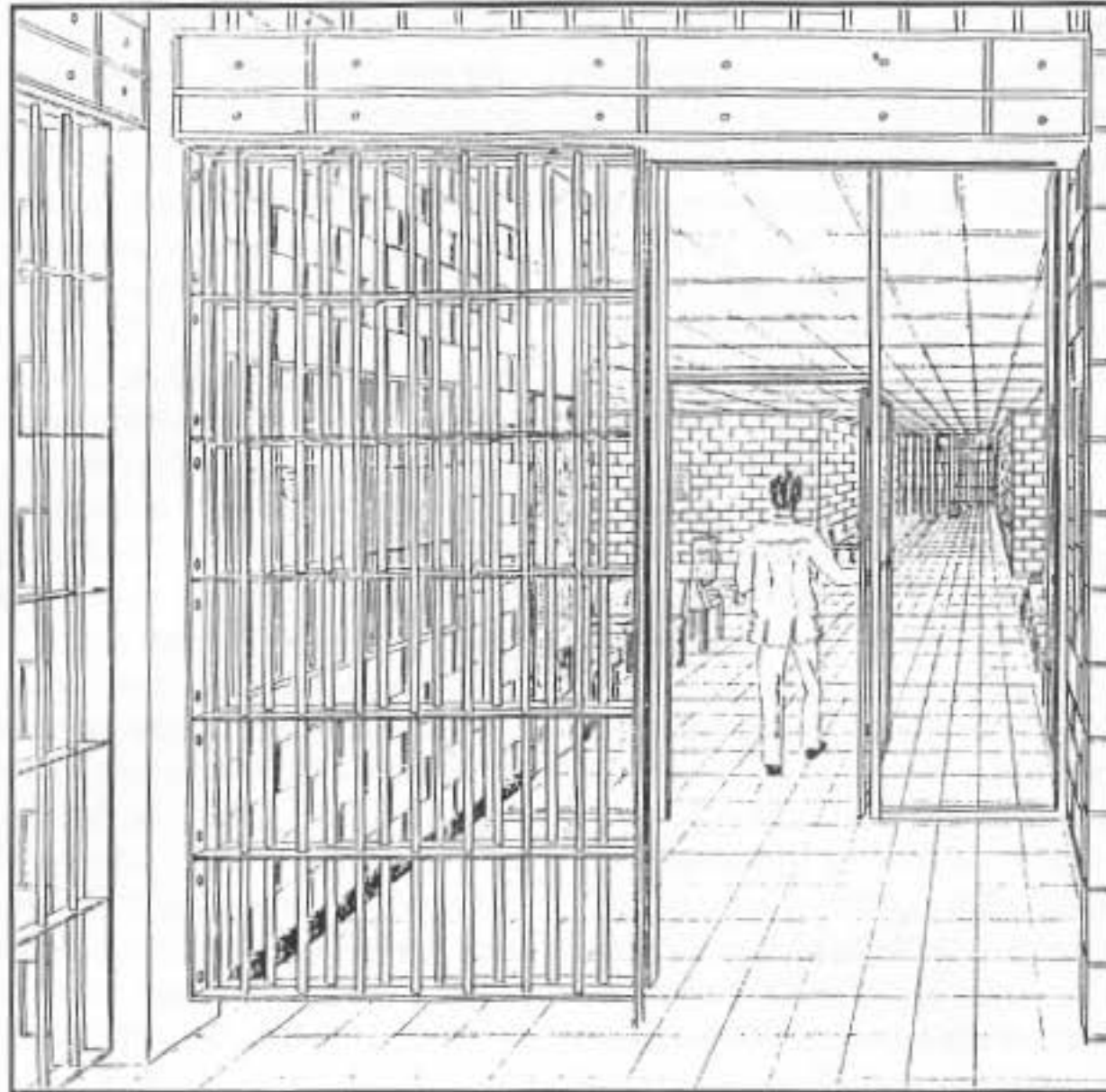
In Harrison County, indigents are represented either by court-appointed private attorneys or by part-time "contract" public defenders who serve by court order for a "period of appoint-

ment [that] shall be at the pleasure of the Court." These orders raise the question of exactly which master the public defender is serving — the client or the judge. Vigorous advocacy on behalf of poor criminal defendants, particularly those charged with serious felonies such as capital murder, seldom, if ever, "pleases" elected judges.

With their princely \$22,000-a-year salaries, Harrison County's "part-time" public defenders average about \$98 per case. Their average annual case load is 225 felony cases, including capital cases.<sup>12</sup> Not surprisingly, since 1988, at least a

dozen contract public defenders have quit in disgust.

In some instances trial judges, recognizing the impossible overload, appoint private attorneys, who, in Mississippi, are supposed to receive \$1,000 per case, plus \$25 per hour.<sup>13</sup> In one currently pending capital murder case, however, there is strong evidence that the judge asked a number of attorneys to do the case for free, threatened to pull names from a hat, and eventually asked attorneys for estimates — much as a builder does for aluminum siding.



Drawn by Ed Crawford, Death Row, Jackson, Georgia.

11. Prior to the Mississippi Supreme Court's decision in *Wilson v. State*, 574 So.2d 1338 (Miss. 1990), there were few public defender offices. Virtually all counties in the state relied on private lawyers who were paid a maximum of \$1,000 to represent their poor criminal defendants regardless of how many hours they expended. In *Wilson*, the Mississippi Supreme Court held that, in addition to the \$1,000, private counsel were entitled to be reimbursed a paltry \$25 an hour for overhead costs. After *Wilson*, numerous counties established inadequately funded public defender offices to save money. Currently, a number of other counties are considering public defender offices. In Leflore County, for example, a county supervisor recently complained about the amount of money the county was paying private attorneys, and stated that the solution is to establish a public defender office and staff it with recent law graduates.

12. Survey by the Mississippi Public Defenders Organization, 1993.

13. See *State v. Wilson*, *supra*.



### Louisiana: Legislators Will Be Legislators

In 1990, the Supreme Court of the State of Louisiana appointed a commission of judges, prosecutors, and criminal defense attorneys to study the quality of representation for the state's poor defendants. This commission, in turn, hired Robert Spangenberg to collect data and make recommendations. His March 1992 52-page indictment did not mince words: "The system of indigent defense in Louisiana is beyond crisis stage; it is on the verge of collapse." Among the most disturbing findings were that:

- The system "is hopelessly underfunded in virtually every judicial district in the state" because reliance on traffic tickets is "wholly insufficient to ensure quality representation."
- "Most indigent defenders around the state are suffering from overwhelming caseloads that are two or three times the acceptable national standards."
- "Virtually without exception, indigent defender programs throughout the state have insufficient staff, at both the attorney and support level."
- "Most indigent defenders are substantially out-matched when compared to the resources made available to the various district attorney offices."
- "Indigent defenders around the state are suffering from extremely low salaries, which are uniformly below those available in district attorneys' offices."
- "The representation of capital defendants at trial is particularly gross due to the lack of training, experience, availability of expert witnesses and the time necessary to devote to the cases. There is also a general lack of knowledge and competence by court-appointed counsel in the sentencing phase of trial."<sup>14</sup>

Spangenberg concluded that at least \$10 million — but really \$20 million — in additional funding was needed to correct the system's numerous flaws. After the Louisiana Supreme Court's commission and its Judicial Council endorsed the report and its conclusions, legislation based on the recommendations was quickly drafted and submitted to the 1992 state legislature.

And what did the legislators do? They shelved the bill<sup>15</sup> and, instead, voted a salary increase totaling \$5.4 million for the state's prosecutors.<sup>16</sup> When the bill to reform the public defender system was reintroduced the next year, it was shelved again.<sup>17</sup> Apparently, the war on crime garners votes; the war on injustice does not.

### No Knowledge of Criminal Law Whatsoever

While the Supreme Court's commission was holding hearings and conducting its study, a lawyer in private practice in

Lake Charles, Louisiana, decided to take matters into his own hands. Mark Delphin had been involuntarily appointed as lead counsel to represent a 17-year-old defendant charged with capital murder. A personal injury lawyer, Delphin had not practiced criminal law in years. At a subsequent hearing, he testified that his appointment to the capital case "shocked" him and, at the time of the appointment, his knowledge of criminal law was "vague." His co-counsel, David Dwight, had represented only one criminal defendant in his 12 years of practice, and that defendant had pleaded guilty. At the hearing, Dwight testified: "I have no knowledge of criminal law whatsoever."

After receiving his appointment, Delphin was told that he and Dwight would neither be paid for the defense nor even reimbursed for such out-of-pocket expenses as telephone calls and photocopies.<sup>18</sup> Delphin was stunned. He recognized the unfairness of asking his client, or any capital murder defendant, to place his life in the hands of an attorney who will lose more money the harder he works. The people of Louisiana, so fervently in favor of the death penalty, were apparently unwilling to pay its costs.<sup>19</sup>

Delphin and Dwight filed a motion seeking reasonable compensation. Soon after, a similar motion was filed by Alcide Gray and Anna Gray (no relation), private practice attorneys in Lake Charles. They, too, had been involuntarily appointed to represent a teenage capital murder defendant for free. Gray, the teenager's lead counsel, had lost his health and been forced to declare bankruptcy largely because of his work on two 1982 capital cases. Ms. Gray had never represented a criminal defendant and, at a later hearing, testified that her appointment to the capital case "scares me to death." On March 21, 1991, a trial court summarily denied the motions, ruling: "The Court has no objection to paying attorneys who are appointed. The question is: Where is the payment going to come from?" The attorneys appealed the ruling to an intermediate appellate court, which held that they were entitled to compensation, but only a token \$1,000.<sup>20</sup> Two years after the trial court ruled, and almost three years after

18. In Louisiana, depending on the locality, some private attorneys receive a maximum of \$1,000 per case, and others, even in capital murder cases, receive nothing at all. Needless to say, trial courts have a difficult time finding private attorneys willing to accept court appointments, particularly to capital cases. Take, for example, the case of John Francis Wille, currently housed on Death Row in Louisiana. Mr. Wille's attorney was appointed to represent him to fulfill a condition of probation on a federal felony charge. *State v. Wille*, 559 So.2d 1321, 1339 (La. 1990).

19. The National Legal Aid and Defense Association has reported that 36 percent of assigned counsel in Massachusetts responding to a 1985 survey, admitted that they had omitted some appropriate defense activity because of inadequate compensation. Omissions included: fully investigating the facts; interviewing witnesses or the police; filing pre-trial motions; and adequately researching the law. (NLADA, *Statewide Evaluation of the Massachusetts Bar Advocate Program* 34, 1986.) The ABA responded to this study in its "Guidelines for the Appointment and Performance of Counsel in Death Penalty Cases" by stating that "[o]missions of such critical activities, shocking in any case, would be unconscionable in cases involving defendants who face the prospect of death. For this reason alone, counsel in capital cases ought to receive adequate reimbursement for their services." (Commentary to ABA Guideline 10.1). (Emphasis added.)

20. *State v. Wigley and Higginbotham*, 599 So.2d 858, 864-65 (La. App. 1992).

14. Spangenberg Group, *op. cit.*, pp. 38-40.

15. On May 19, 1992, the Louisiana Senate Judiciary Committee "C" unanimously voted to defer action on SRS 92-1632, which sought to create a uniform and adequately funded statewide indigent defender system.

16. See 1992 La. Acts 1045, 1064, and 1065.

17. *Times-Picayune* (New Orleans), May 18, 1993, p. B4, reported that the Senate Judiciary Committee unanimously voted to kill SB 60 which sought to establish a statewide indigent defender system.



Delphin filed his motion, the case currently is pending in the Louisiana Supreme Court — and has been for well over a year. Apparently, the Louisiana Supreme Court, too, is wondering where the money is to come from. Meanwhile, many poor capital murder defendants in the state are still being asked to place their lives in the hands of lawyers who lose money defending them — and who can cut their losses only by doing a slap-dash job.<sup>21</sup>

### **"Not Even a Lawyer With an 'S' on His Chest Could Handle this Docket"**

Unlike many other overburdened public defenders, Rick Teissier was willing to say the unthinkable: "I am not doing my job." After Delphin filed his motion, Teissier, a staff attorney for the Orleans Indigent Defender Program (OIDP) in New Orleans, filed a motion aptly entitled, "Motion for Relief to Provide Constitutionally Mandated Protection and Resources."

The sole public defender in Section "E" of Orleans Criminal District Court, Teissier handles between 80 and 90 percent of the section's cases, and generally is pitted against two or three deputy district attorneys. He has a caseload of about 600 felony cases per year and his poor clients routinely spend 30 to 70 days in jail before they meet him. The barebones OIDP has only three staff investigators and a tiny support staff for its 7,000 cases a year.

Teissier's judge — unlike Delphin's — listened. On February 22, 1992, newly elected Calvin Johnson acknowledged that the deck was stacked against criminal defendants and issued a visionary opinion that received national attention. The judge ruled that the OIDP:

operat[es] on less than a hope and little more than a prayer. ...Not even a lawyer with an S on his chest could effectively handle [Teissier's] docket. [Teissier] does not have adequate time nor resources to consult with his clients. He does not have the ability to investigate fact or law and he is unable to adequately prepare. ...[His problem] is greatly exacerbated by the lack of everyday, common resources (investigators, paralegals, law clerks, expert witnesses, a secretary and a library).

The relief ordered by Judge Johnson went to the root of the problem. Holding that the OIDP's resources must be

increased substantially and that the state government must provide the money, Judge Johnson subpoenaed to his chambers the president of the Louisiana Senate, the speaker of the Louisiana House of Representatives, and the president of the Louisiana Bar Association to discuss supplemental funding.

### **Hope on the Horizon?**

On appeal by the state Attorney General's office, the Louisiana Supreme Court found Judge Johnson's remedies "inappropriate at this time," and reversed.<sup>22</sup> In another unprecedented ruling, however, the Court held that criminal defendants have a right, prior to their trials, to an attorney with "the time and resources to apply his skill and knowledge to the task of defending each of his individual clients. ...[Because of] excessive caseloads and the insufficient support..., the provision of indigent defense services [by Teissier] is...so lacking that defendants who must depend on it are not likely to receive the reasonably effective counsel the Constitution requires." And although the Court "decline[s] at this time to undertake...more intrusive and specific measures," it did

apply a rebuttable presumption that Teissier cannot provide his clients with effective representation at trial, and ordered Judge Johnson to stop the trials in all cases in which the presumption is not rebutted.

The Supreme Court's decision may — or may not — produce better representation for poor people charged with crimes in Louisiana. Since criminal

defendants have a constitutional right to a speedy trial, one important, unanswered question is whether defendants will be freed if the new decision unduly delays their trials. If defendants are ruled eligible for release, the Louisiana Legislature will no doubt move quickly to provide additional funding for indigent defense in the state. If not, the decision will simply mean that indigent defendants will rot longer in jail, waiting to go to trial. Another troubling question is whether other public defenders in Louisiana will use the decision to bring similar challenges. So far, unfortunately, no other public defenders have challenged their workloads in the wake of Judge Johnson's visionary opinion. Apparently, they were unwilling to swallow their professional pride and say, "I can't do my job under these conditions." But if poor people charged with crimes in this country are to have a chance, that is exactly what their court-appointed attorneys must say — as loudly and as often as necessary. •

Apparently, the war on crime  
garners votes; the war on  
injustice does not.

21. Soon after the compensation motions were filed, the teenage defendants accepted an offer to plead guilty to manslaughter, a rare plea offer in capital murder cases. It could well be that these generous offers were an attempt to

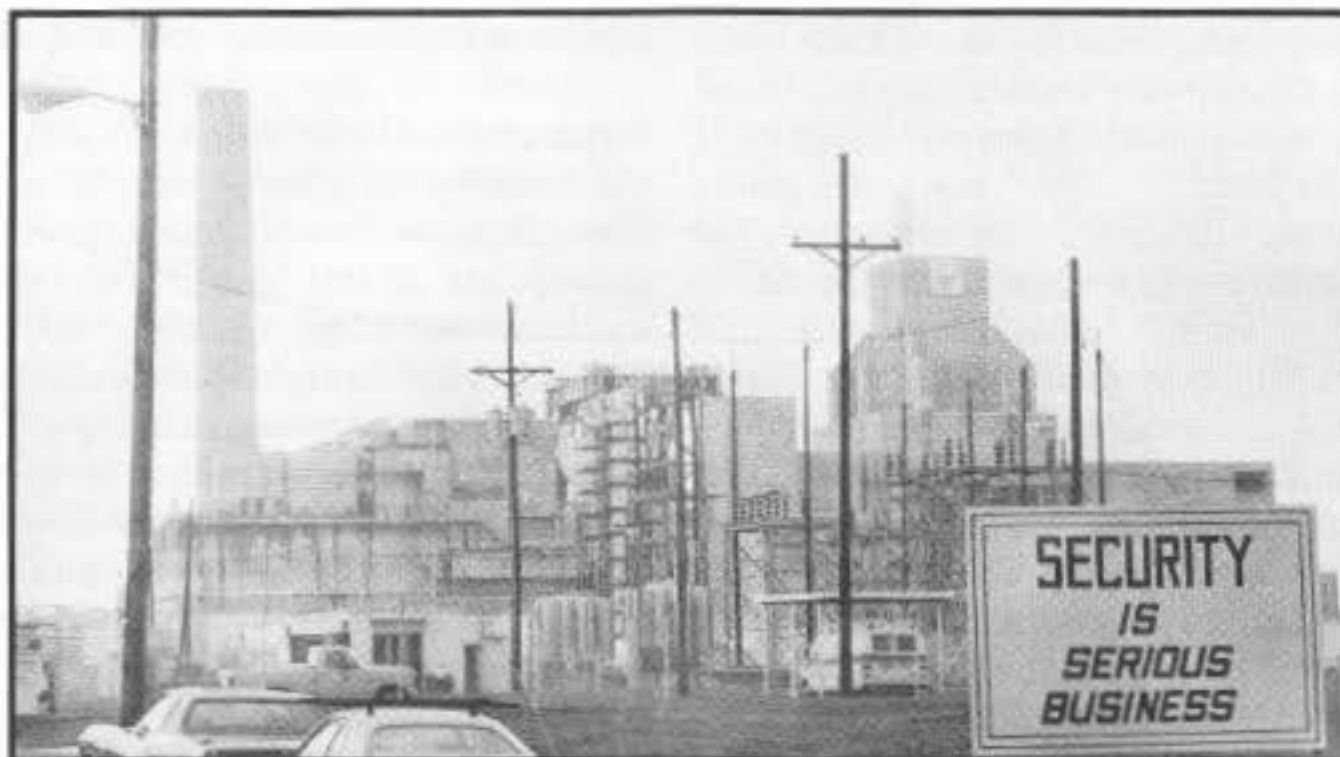
render moot the motions for compensation. On appeal, the State of Louisiana has argued that the motions are moot because of the guilty pleas.

22. *State v. Leonard Pearl*, Nos. 92-KA-0907 and 92-KD-1039 (July 1993).



# NUCLEAR WASTELAND

THE COLD WAR'S



DEADLY LEGACY

In the name of national security, 40 years of nuclear weapons production has turned the Savannah River area into a national sacrifice zone of chemical and radioactive pollution. The danger to the public and the environment will last for centuries.

Ron Chepesiuk

The Cold War is over. While the U.S. basks in the winner's circle, the people around the Savannah River Site (SRS)<sup>1</sup> near Aiken, South Carolina, are losers. After 40 years of helping build bombs, they have lost a safe environment, many have lost their health, and soon more may lose their jobs. SRS — the major production site for the manufacture of tritium, the radioactive form of hydrogen required for nuclear warheads — is a case study in monumental environmental neglect and negligence. After 30 serious accidents and 14,000 "incidents," the Savannah River area (along with Hanford, Washington, and Rocky Flats, Colorado) has become a national sacrifice zone.

The Department of Energy (DoE) is conducting a Programmatic Environmental Impact Statement on reconfiguration of the whole weapons complex. It is expected to recommend creation of Complex-21, a one-stop bomb factory for the 21st century, which will consolidate the military's nuclear facilities. SRS is one of the six sites — along with Los Alamos National Laboratory (Los Alamos, N.M.), Lawrence

Livermore National Laboratory (Livermore, Calif.), Oak Ridge Reservation (Oak Ridge, Tenn.), Pantex Site (Amarillo, Texas), and Idaho National Engineering Laboratory (Idaho Falls) — in the running. If chosen, SRS, despite its dismal performance and environmental records, will get a new lease on life.

The U.S. government's song-and-dance justification for the recurring nuclear nightmare at the SRS, familiar during the Cold War, remains unchanged: National security justifies secrecy, environmental degradation, and even a few cancers here and there. Tritium was vital to national security and its uninterrupted production justified hiding U.S. policies and their toxic consequences from a public put at risk.<sup>2</sup>

## One of the World's Biggest Construction Projects

As the Cold War was heating up, the federal government, through the Atomic Energy Commission (which later became the Department of Energy [DoE]), initiated one of the biggest building projects ever undertaken. In June 1950, it estab-

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1. Savannah River "Plant" (SRP) was renamed "Site" (SRS) on April 1, 1989.

2. Brad Swope, "DOE Reactor Suit Could Hurt Security," *Aiken Standard* (S.C.) March 20, 1989, p. A1. Using tritium has allowed the U.S. to build — while maintaining explosive power — smaller and faster warheads that can travel farther with greater accuracy. "Stopping the Arms Race at the Source — Campaign to Stop Nuclear Weapons Production," *Greenpeace Action*, July 1989.



lished the Savannah River Plant and contracted its design and construction to E.I. DuPont de Nemours Company.<sup>3</sup> Completed in 1954, the 192,323-acre site (approximately 300 square miles) was taken over in 1989 by Westinghouse Electric Corporation and its subsidiary, Westinghouse Savannah River Company, which was responsible for day-to-day operation.

From the beginning, DoE collaborated with DuPont and then Westinghouse to place production quotas ahead of safety and environmental considerations. A series of congressional investigations, Freedom of Information requests by environmental organizations, General Accounting Office audit reports, and whistle-blowings by former SRS employees have documented a consistent pattern of deferred plant maintenance, poor personnel training, and management inattention to health and safety issues. SRS, consequently, has become a polluted island of chemical wastes and radioactive hazards that will endanger public health and safety for centuries to come.<sup>4</sup>

### National Insecurity

At first, the only people who complained were refugees from the towns destroyed to make way for SRS.

"They told us to move and take our dead with us," recalled C. Forman, one of the 723 residents of Ellenton.<sup>5</sup> Displaced residents did just that, moving 12 cemeteries containing 5,984 graves. Many faced tough times as the government did little to help them move or resettle them.<sup>6</sup>

3. The construction of SRS was touted as the biggest project since the Panama Canal. William Lanouette, "Weapons Plant at 40: Savannah River's Halo Fades," *Bulletin of the Atomic Scientists*, December 1990, pp. 27-28. The site includes parts of Aiken, Allendale, and Barnwell counties, all located in South Carolina, and is bounded on the southwest for 27 miles by the Savannah River. SRS is one link in a chain of 13 facilities owned by the DoE to produce nuclear weapons. The huge national complex covers 3,900 square miles in 13 states and employs about 90,000 people. ("What is the Savannah River Plant and what is its purpose?" *Research Notes*, Energy Resource Foundation [ERF], undated.)

4. James B. Edwards, "Tritium Shortage Can Endanger U.S. Nuclear Deterrent," *The State* (Columbia, S.C.), December 19, 1989, p. 2B. The points presented in this letter, written by a former South Carolina governor, are typical.

5. William Lanouette, "Our Town Versus National Security," *Bulletin of the Atomic Scientists*, December 1990, p. 31.

6. George McMillan's investigative articles that appeared in *Harpers*, *New York*



Robert Del Tredici

**George Couch, a maintenance worker for 22 years, was fired by SRS shortly before retirement after he contracted polycythemia vera, a rare blood cancer associated with radiation exposure.**

Environmentalists raised early concerns about danger to health and safety, but were hampered by lack of hard evidence. "Prior to the 1980s, almost anything that happened at SRS, including the release of contaminants, was secret," says Brian Costner, Director of the Columbia, South Carolina-based non-profit Energy Research Foundation (ERF), an independent environmental organization that, since its founding in 1980, has monitored the SRS. "The U.S. government said it was necessary to protect the SRS's production process from any kind of scrutiny because the plant was vital to national security."<sup>7</sup>

It took the growing environmental movement of the early 1980s and the Chernobyl disaster of April 1986 to rouse a comatose Congress and a disinformed and largely disinterested public. The Soviet catastrophe triggered an intense review of nuclear safety standards around the world. DoE, for example, conducted several safety studies on reactors at its nuclear weapons plants. The findings were not sanguine: The reactors which were built in the 1950s to produce plutonium as well as tritium were aging and unreliable; the safety programs were inadequate.<sup>8</sup>

Not until 1988, however, did SRS's legacy become widely known. A panel of members of the joint House Energy Subcommittee and the Senate Government Affairs Committee concluded that the facility was a Chernobyl-like accident

*Times Magazine* and the *Washington Post* in the early 1950s. For a description of conditions at New Ellenton, one of the towns created by SRP's construction, see A. Carothers, "The Death of Ellenton," *Greenpeace*, May-June 1988, pp. 13-19.

7. Author's interview, December 14, 1992.

8. "Savannah River Plant Takes Another Broadside," ERF, April 10, 1992, p. 13.



waiting to happen.<sup>9</sup> According to its own documents, the government hid at least 30 serious mishaps including:

- January 1960. After a rapid shutdown of one of the five reactors (designated C, K, L, P, and R), operators violated numerous safety procedures when they tried to reestablish full power within 29 minutes — 12 times faster than the allowable rate. If the 500 megawatt-a-minute power rise had continued unchecked, the coolant would have boiled very quickly, melted the fuel, and caused a serious nuclear accident.
- May 1964. For 40 days, a reactor shutdown button didn't work, making emergency shutdown nearly impossible.
- November 1970. After three attempts failed to start the C-reactor, operators ignored the possibility of trouble and tried again. A fuel bundle in the core melted.
- December 1979. During a brownout, a crane moving reactor fuel stalled, leaving hot fuel partly exposed.<sup>10</sup>

Confronted with this evidence, members of the two congressional committees were quick to chastise DoE for failing to ensure that Du Pont operated SRS safely. House Energy Subcommittee chair Mike Synar (D-Okla.) described the SRS operation as "frightening." John Glenn (D-Ohio), chair of the Senate committee, declared the revelations "very disturbing..., unsettling." Both failed to question — or even mention — that although the list of 30 "accidents" was compiled in 1985, it was not made public until three years later.<sup>11</sup>

The damning revelations, studies, and reviews which finally emerged forced SRS to reduce reactor power levels by 50 percent in 1988.<sup>12</sup> A 1988 DoE internal study revealed that critical pipes were webbed with new cracks and that officials had failed to deal with potentially inadequate seismic bracing.<sup>13</sup> The DoE finally acknowledged that deteriorating facilities and widespread contamination — caused by nearly four decades of neglect and mismanagement — endangered public health and safety. The production of tritium and plutonium, radioactive elements essential to the making of nuclear weapons, ground to a halt.<sup>14</sup>

"Restart of any of the (SRS) reactors will not be authorized until I'm satisfied that they can be operated safely," DoE Secretary James D. Watkins promised in a letter to Senator Sam Nunn (D-Geo.) of the Armed Services Committee.<sup>15</sup>

9. *Ibid.*

10. Dick Thompson, "Big Trouble at Savannah River," *Time*, October 17, 1988, p. 37; Lee Bandy, "Secret Mishaps Revealed," *The State*, October 1, 1988 p. 6A; "Savannah River's Scary Saga," *U.S. News and World Report*, October 17, 1988, p. 13. A brownout is a cut in electrical current which results in a partial blackout of power.

11. *Ibid.*

12. *Ibid.*

13. "Stopping the Arms Race...", *op. cit.*

14. "Are the Savannah River Plant Reactors Safe?" (A Series of Fact Sheets Prepared for the Public), ERF, Columbia, S.C.

15. Scott Shepard, "Energy Secretary Pushes Back Savannah River Plant," *Atlanta Constitution*, April 28, 1989, p. 3A.

The secretary, it turned out, was too easily satisfied. On December 13, 1991, after nearly three years of controversy and an estimated \$1 billion in safety and modernization improvements to SRS, Watkins approved the restart of the facility's K-reactor, the nation's only source of tritium.<sup>16</sup> Almost immediately, problems began. After initial tests, workers had to replace a faulty safety rod.<sup>17</sup> On Christmas Day, a heat exchanger at the reactor malfunctioned and about 150 gallons of radioactive tritium leaked into a stream that fed the Savannah River, prompting SRS officials to stop the tests until the exchanger could be replaced.<sup>18</sup>

Westinghouse Electric insisted the leak posed no health and safety risks. This assertion was challenged in a government investigation which found that tritium levels in excess of Environmental Protection Agency standards forced a ten-day shutdown of the water pumps serving the South Carolina counties of Beaufort and Jasper.<sup>19</sup> It was the second time in five years that pumps on the Savannah River, which forms part of the South Carolina-Georgia border, were closed while radiation from SRS flowed past the drinking water intake valves.<sup>20</sup> When the leak moved 150 miles downriver to the coast, Georgia state environmental officials asked the owners of two oyster beds around Savannah to close their beds until further notice. It was the height of the oyster season.<sup>21</sup>

### Changing Political Environment

For those who have followed SRS's chilling saga, the alarming pattern of contamination and accidents was nothing new. What had changed was the political context.

Nuclear disarmament developments since 1991 had put into question the rationale for pouring billions of additional dollars into the SRS and other sites in the nuclear weapons complex. On October 27, 1991, President Bush announced that the U.S., as part of an arms agreement with Russia, would dismantle 3,000 of the nation's 19,000 nuclear warheads.<sup>22</sup> On January 3, 1993, the U.S. and Russia signed the Start II treaty that would significantly reduce their strategic nuclear weapons by two-thirds. If the proposed cuts are implemented, the two countries would be left with 3,000 to 3,500 warheads, roughly their levels in the 1960s before the advent of multiple warhead missiles.<sup>23</sup>

16. Gordon Thompson and Steven C. Sholly, "Let's X-out the K," *Bulletin of the Atomic Scientists*, March 1992, pp. 14-15; "Savannah Nuclear Site Cleared to Resume Production," *Los Angeles Times*, December 14, 1991, p. 22A; "Operation Set to Restart DoE Tritium Reactor," ERF news release, November 11, 1991, p. 11; Keith Schneider, "U.S. Restarting Nuclear Arms Reactor," *New York Times*, December 14, 1991, p. 18A.

17. "Delay in Restart," *Charlotte Observer*, January 11, 1992, pp. 1-2C.

18. "K reactor Leaks Coolant into Stream," *Charlotte Observer*, December 26, 1991, p. 2C. A heat charger, used to cool the reactor, is a boxcar-size device filled with thousands of tubes containing heavy water. The tubes are cooled with river water.

19. "People Skeptical of SRS Leaks," *Charlotte Observer*, January 13, 1992, p. 2C.

20. *Ibid.*; and "SRS Radiation Leaks Makes Users of Water Downstream Rethink Plans," *Charlotte Observer*, December 28, 1991, p. 2C.

21. "Greenpeace Says SRS Should Pay for Spill," *Charlotte Observer*, January 17, 1992, pp. 1-2C.

22. John Winters, "Reactors Decision Delayed," *Augusta Chronicle*, August 7, 1992, pp. 1A, 8A; and "New Production Reactor Delayed," *Research Update* (ERF), October 1, 1992.

23. *Charlotte Observer*, September 30, 1992, pp. 1A, 6A.



SRS's importance was further diminished in July when President Clinton announced that the U.S. would extend its moratorium until September 1994 and would not be the first country to resume underground nuclear testing. This decision followed public and congressional outcry and reversed the president's previous commitment to continue the testing.<sup>24</sup>

### Political Tide Turns Against SRS

As the political tide turned, the old justification of national security lay exposed on the polluted shores of Savannah River.

Even those who drew short-term benefits from the plant began to wonder if it was worth the human cost. Until recently, the people of Aiken and the surrounding counties had remained steadfastly loyal to SRS and the military-industrial complex. Economics — the good jobs, schools, and lifestyles that SRS has brought — had been more important than "liberal" pining for peace and nuclear disarmament. Indeed, SRS is South Carolina's biggest employer with about 26,000 employees on an annual payroll of \$750 million. Plant purchases pump in another \$40 million to the state's economy.<sup>25</sup> A quarter of the workers live in neighboring Georgia.

"It's a real nuclear culture," explained Tom Clements of Greenpeace. "You can't really talk to the locals about the problems because almost everybody in Aiken and the surrounding area is tied to the SRS in some way."<sup>26</sup>

South Carolina's power brokers, most notably Sen. Strom Thurmond (R), had been cheerleaders for DoE's efforts to make SRS the flagship of the country's nuclear weapons arsenal. But, they too, began to sniff the shifting political winds. On January 16, 1992, less than a month after the oyster bed scandal, four South Carolina legislators, including Sen. Ernest Hollings (D) and Rep. John Spratt (R), sent a letter to Energy Secretary James Watkins. They recommended that

since no military reason compels the production of tritium in 1992, the reactors should not be restarted until additional safety upgrades were completed.<sup>27</sup> Since Hollings and Spratt, along with Thurmond, had been frequent recipients of PAC contributions from DuPont and Westinghouse, the letter reflected a significant change.<sup>28</sup>

Meanwhile, the Defense Nuclear Facilities Safety Board, a watchdog body usually very sympathetic to the DoE line, began an investigation of SRS's latest problems. The DoE was once again under intense pressure to delay restart of the K-reactor.<sup>29</sup>

### Blowing Whistles and Falsifying Records

The cracks in the reactor's plumbing and the legislative uncoupling from the SRS bandwagon opened enough space for SRS employees to risk blowing the whistle on the safety and environmental violations. One unnamed Westinghouse engineer, with 21 years' experience in the commercial and naval nuclear fields, wrote a letter to Watkins, revealing that SRS officials had falsified records so they could restart the nuclear plant before it was safe.<sup>30</sup> The next month, another SRS worker charged that in

order to meet a December 1990 deadline to restart the K-reactor, Westinghouse violated long-standing rules about working in radiation areas.<sup>31</sup>

Changing geopolitical considerations and public pressure were forcing DoE to reassess the role and scope of its nuclear



Robert Del Tredici

**SRS reprocessing area with high-level storage tanks. SRS, which covers 300 square miles, is part of the huge federal nuclear weapons complex that extends over 3,900 square miles in 13 states and employs about 90,000 people.**

24. R. Jeffrey Smith, "President Extends Moratorium on Underground Nuclear Tests," *Washington Post*, July 4, 1993, p. A1.

25. *Savannah River Plant Public Involvement Plan*, United States Department of Energy, September 8, 1992, p. 13.

26. Author's interview, November 2, 1989; Clements was then Southeastern Coordinator for Greenpeace.

27. Sharyn Wiza, "Delay in Restart Is Sought," *Charlotte Observer*, January 17, 1992, pp. 1-2C. Watkins, an admiral, was chief of naval operations, 1982-86.

28. Federal Election Commission, *Committee Index of Candidates Supported/ Opposed* for election cycles 1985-86, 1987-88, 1989-90, 1990-92. The Westinghouse PAC is among the top 20 contributors to members of the Senate Armed Services Committee; see Larry Makinson, *Open Secrets: The Encyclopedia of Congressional Money and Politics* (Congressional Quarterly, Inc.: Washington, D.C., 1992). Sen. Thurmond was the ranking minority member of the Subcommittee on Nuclear Deterrence until 1992.

29. *Ibid.*

30. "SRS Workers Say Rules Violations Exist," *Charlotte Observer*, September 7, 1992, p. B2. Several other workers have criticized and blown the cover off SRS safety management standards and performance; see William Lanouette, "Weapons Plant at 40: — Savannah River Halo Fades," *Bulletin of the Atomic Scientists*, December 1990, pp. 27-28.

31. John Winters, "Engineer Says SRS Took Risk," *Augusta Chronicle*, August 7, 1992, pp. 1A, 18A.



weapons complex. Secretary Watkins announced that the department would indefinitely delay choosing the site and technology for a new production reactor. DoE had planned to build a large, heavy water reactor at the SRS to supply 100 percent of the nation's tritium needs, while a smaller one would be built in Idaho as a backup.<sup>32</sup>

### Extent of Pollution

In April 1993, DoE officially put the production of tritium at SRS on hold. It could not so easily halt pollution.

From its construction, to the early years of the Reagan administration, SRS's round-the-clock defense of the "free world" created the most contaminated industrial site in South Carolina. Although no one can really measure its extent, environmentalists say widespread and severe soil and ground water contamination will threaten the region's drinking water supplies for generations to come. In addition to waste dump sites, plant managers filled underground tanks with as many as 35 million gallons of high-level radioactive liquid waste; they put hundreds of thousands of cubic feet of transuric

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*With actual reduction of radioactive waste an impractical goal, cleanups simply shift the poison from an immediately dangerous site to a potentially less dangerous one.*

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wastes (elements heavier than uranium) in interior storage facilities; and they buried an estimated 21 million cubic feet of low-level radioactive waste in trenches.<sup>33</sup> The plan to vitrify and store the 35 million gallons on site is plagued with problems: It is two years behind schedule and hundreds of millions over budget.

Vast quantities of the byproducts of the SRS operation — acids, solvents and other hazardous chemicals and waste which became even more dangerous when contaminated with radioactivity — were sent to hundreds of grossly inadequate waste dumps on site (burial grounds, seepage basins and storage tanks). This poisonous brew has begun to migrate into the water supply and to the surface, to contaminate areas beyond the SRS's regulated borders.<sup>34</sup>

### No Assessment of Danger

Incredibly, although the potential is murderous, no one really knows or has seriously attempted to assess the effect of the

contamination and pollution on human health. The only government studies of radiation from SRS and other nuclear bomb factories (and even those have been inadequate) concentrated on workers and nearby residents.

Recently, the government has begun to examine the broader health effects of radiation leaking into the environment.<sup>35</sup> A team of a dozen scientists, under contract to the Centers for Disease Control, is now poring through 15,000 file boxes relating to the SRS. They hope that these records, classified "Top Secret," will reveal evidence of the extent of the leaks and the attempt to cover them up. "This study is going to tell the truth about the releases from this site," says group member John Till. "It will not be surprising to me to find information about some very large releases of radioactive doses to people that no one really knows about."<sup>36</sup>

If Till is correct, it will not be the first time studies have shown that contamination at the weapons plant ranks as one of the biggest environmental disasters in history and poses a significant health risk. In 1990, for example, a study showed that as many as 13,500 residents of the area near the Hanford site may have received heavy doses of radiation to their thyroids during the late 1940s.<sup>37</sup>

This Washington state facility has nine nuclear reactors spread over 560 square miles. It contains concentrated levels of plutonium syrup and other toxic chemicals which can kill quickly if released into the environment.<sup>38</sup> In addition, DoE estimates that Hanford has produced at least 625,000 cubic meters of solid waste and that about 200 square miles of the ground water is contaminated. One DoE report actually admitted that, while some chemicals break down into harmless material, others remain dangerous forever.<sup>39</sup> Many of these pollutants can kill slowly: They are carcinogenic, teratogenic, and/or undermine the human immune system.

### Covering Up

SRS and DoE have worked together to hide the extent of the damage. The pattern of corporate and government collusion and lying at SRS is reflected not only at SRS and Hanford, but also at other military nuclear facilities around the country. After years of protest and leaked reports that workers have been burying radioactive waste in unsafe incinerators and dumping it into drinking water, federal agents finally raided the Rocky Flats, Colorado site in 1989 and shut it down. (Plutonium triggers for all nuclear stockpiles are made at Rocky Flats using plutonium from Hanford and SRS.) Still, the government has tried to reopen the military facility,

32. "Arms Pact Slashes Arsenal," *Charlotte Observer*, January 5, 1993, p. 1A.

33. "Savannah River State Involvement Plan," DoE, September 8, 1992; "Savannah River Plant, Deadly Defense Radioactive Waste Campaign," 1988 (Radioactive Waste Campaign, N.Y.); and "Radioactive and Hazardous Waste at Savannah River Site," *Research Notes*, ERF, February 1993.

34. Author's interview, Tom Clements, June 16, 1993; "Radioactive and Hazardous Wastes...," *op. cit.*

35. In February 1986, DoE released a 90-page report. Because records on worker exposure at SRS were incomplete, it concluded, workers were probably exposed to even greater amounts of radiation than reported. (See "Plant Radiation Readings Suspect," *The State*, February 16, 1993, p. 2C.)

36. "Old Secret Files May Tell Group More About SRS," *Charlotte Observer*, February 16, 1993, p. 2C.

37. "A-Weapon Clean Up Estimates Doubled," *Los Angeles Times*, February 11, 1991, p. A22.

38. Doug Garr, "Too Hot to Handle," *Popular Science*, August 1992, p. 35.

39. Brad Knickerbocker, "Cost of Nuclear Waste Clean Up in the Billions," *Christian Science Monitor*, April 8, 1992.



insisting that it remains vital to the national defense. The DoE has even poured nearly two billion dollars into repairs and safety inspections.<sup>40</sup>

In the spring of 1992, after a suit initiated by concerned environmental organizations, Rockwell International, Rocky Flats' operator, pleaded guilty to mishandling toxic wastes at the site and agreed to pay \$18.5 million, the second largest fine ever levied for illegal pollution.

In fact, an investigative panel of the House Committee on Science and Technology reported in January 1993 that Rockwell had gotten off lightly. The seemingly impressive \$18.5 million fine was actually \$4 million less than Rockwell's SRS earnings from 1987 to 1989, the period when it illegally polluted. The panel also charged that the Justice Department lost the chance to pursue individual indictments against not only Rockwell employees, but also DoE officials.<sup>41</sup>

### Cleaning Up on Cleanup

And what of SRS's future? With a halt of operation of nuclear production reactors at SRS, many DoE officials are looking for ways to continue production of nuclear weapons materials. Although President Bush had declared in July 1992 that no more plutonium or uranium would be produced for U.S. nuclear weapons, a faction within DoE has been pushing to keep the SRS alive. Under the guise of "waste management," they want to restart the aging reprocessing facilities.<sup>42</sup> A battle is brewing within DoE over the reprocessing issue, as the old guard tenaciously clings to the almost religious belief that plutonium is the national resource of which we must produce more and more. Eventually, they assert, the U.S. will use it either in nuclear weapons or as nuclear power fuel.

Even if that faction loses out and SRS never resumes production of any sort, the site will remain toxic and the operators will continue to reap profits at taxpayer expense for years to come. DoE has announced plans to address the widespread environmental damage caused by 40 years of atomic bomb making.<sup>43</sup> Congressional and weapons experts, as well as environmentalists, expect the cleanup to supplant nuclear weapons production as the plant's primary mission.

In any case, critics are less than enthusiastic about prospects for restoring the environment. DoE's oversight of the nuclear weapons industry has been consistently and woefully inadequate and the government is hampered by lack of funds, will, and technology. A 1991 congressional Office of Technology Assessment (OTA) study concluded after an 18-month investigation that the DoE has yet to reach a realistic assessment of the magnitude of the cleanup costs, and has neither the credibility nor the capability to do the job. Re-

sponsibility for the regulation and oversight of nuclear waste, the report concluded, should be taken away from the DoE.<sup>44</sup>

Among concerns mitigating against a cleanup are:

**No Coherent Strategy:** Public concerns over health and environmental effects have yet to be addressed, the OTA report went on, largely because the government lacks the necessary expertise and organization to deal with the problems. "Among the missing elements [is] a coherent strategy for evaluating potential off-site human exposure to radioactive and hazardous contaminants..."

**DoE's Conflict of Interest:** "It doesn't make a lot of sense," charges Dr. Gaytha Langlois, a biology professor at Bryant College and a water pollution expert who has studied the environmental impact of the nuclear weapons complex, "to put oversight and monitoring activities in the hands of an agency [DoE] that is encouraging the development of nuclear energy. It doesn't have any reason to be overcautious."<sup>45</sup>

**Industry's Conflict of Interest:** "The financial winners in the environmental destruction at SRS and other weapons sites are the private contractors such as Westinghouse and Martin Marietta. These companies made profits from making nuclear weapons and created the associated environmental nightmares. They are now gleefully profiting from the billions of dollars being shoveled out in an attempt to clean up their own messes. The losers in the cynical game are the taxpayers and the environment."<sup>46</sup>

**Lack of Regulation:** James D. Werner, recently nominated as policy director at the office of environmental restoration and waste management at DoE, faults the incestuous regulatory mechanism. An expert on the nuclear weapons and a senior environmental engineer with the Natural Defense Resources Council, he argues that the "historic lack of external regulatory controls is widely believed to be one of the primary causes of the massive environmental and safety problems now hobbling the nuclear weapons complex."<sup>47</sup>

**No Presidential Leadership:** Clinton has yet to make a public statement about cleaning up the nuclear weapons complex, and without presidential leadership, little will happen beyond the accumulation of more reports. "I have not seen anything from Clinton that shows he will take a pro-nuclear cleanup stance," says Langlois.<sup>48</sup>

**Poor Technology:** Even if the government were to develop the will, it does not have the way to clean up four decades of nuclear garbage. According to James D. Werner and Dan W. Reicher, Esq., DoE's goal of cleaning up all the weapons sites throughout the nation in 30 years is "unrealistic" because it isn't based on meaningful future estimates of the work to be done and the availability of the necessary technology. Glenn Paulson, an environmental engineering

(continued on p. 65)

40. "Panel of Congress and Citizens Deal With Bomb Plant," *Christian Science Monitor*, January 6, 1993, p. 8.

41. *Ibid.*

42. Reprocessing, the chemical separation of plutonium and uranium from nuclear materials, is the only way DoE has ever handled spent nuclear fuel even though it creates a huge volume of high-level nuclear waste and is conducted at two facilities so large they are called F- and H-canyons.

43. Knickerbocker, *op. cit.*, pp. 6-7.

44. *Ibid.*

45. Author's interview, February 12, 1993. Bryant College is in Smithfield, Rhode Island.

46. Author's interview, July 29, 1993.

47. Author's interview, February 9, 1993.

48. Author's interview, February 12, 1993.



*The bête noire of the current U.S. obsession with economic espionage is not the former USSR or even Japan, but France. Throughout the debate over the mission of U.S. intelligence agencies, references to French espionage against U.S. companies have aroused considerably more anger than, say, Chinese spying. There is an element of hurt surprise in the complaints, as if this were a betrayal. This spying is neither old, nor, of course, exclusively French, but the Gallic model provides some useful insights into the motives and consequences of economic espionage in an age of transnational enterprises. The chief beneficiary of French espionage is a computer company, Machines Bull.*

## French Bull: Spies for Profit and Glory

Doug Vaughan

Groupe Bull is a state-owned holding company that sits at the very center of France's formidable military-industrial complex. Economically and politically, it is akin to the keystone in the Arc de Triomphe: With more than 40,000 employees, Bull ranks first among European computer-makers, sits among the top ten worldwide providers of information services, and sells its products in more than 100 countries.<sup>1</sup>

A state-of-the-art computer industry is essential to French grandeur. The relationship between modern weaponry, especially nuclear weapons, and computers is symbiotic: Ever more powerful computers are needed for the research and development, design, engineering, production, management and security of nuclear weapons, and for the industrialization of nuclear power that supplied both fuels and weapons-grade uranium and plutonium for weapons systems.<sup>2</sup>

Groupe Bull, however, has been losing large amounts of money since the late 1970s despite massive infusions of public funds for research and development. Like its chief rival, IBM, Bull had lost its competitive edge. The French government was prepared to do anything to save the company, which was not only a source of potential profit and essential technology, but a symbol of French independence and international prestige.

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The head of the FBI's counterintelligence unit in the San Francisco area, Edward Appel, described Silicon Valley as the top target of the French intelligence service, Direction Generale de la Securite Extérieure (DGSE), and designated the giant French state-owned computer firm, Groupe Bull, as the chief beneficiary of that spying.<sup>3</sup> Industrial espionage, now a visible focus of CIA and other U.S. intelligence agencies' activity, has a long history with the French-U.S. axis, one of the most active in the second half of the twentieth century.

A common French method of recruitment is to offer military deferments to graduate students willing to cooperate when they get jobs with U.S. high-tech firms. In one case, a French national was caught as he prepared to leave the U.S. with the source code of a new program developed by Renaissance Software of Palo Alto, Calif. Another security consultant described how a client opened an office in Paris only to

discover that his business plans were in the hands of local competitors who had somehow obtained them from his computer's hard-drive when he was in transit to France.<sup>4</sup>

In one widely reported incident, two American executives visiting Paris left their laptop computers and a prototype of

1. *French Company Handbook, 1991* (Paris: International Herald Tribune), p.33.

2. See Richard Rhodes, *The Making of the Atomic Bomb* (New York: Simon & Schuster, 1986); on the effects on the French state, see Jim Falk, *Global Fission: The Battle Over Nuclear Power*, (London: Oxford University Press), 1982).

3. Appel's predecessor in the Bay Area, Patrick Watson, is now deputy assistant director of the FBI, overseeing counterintelligence on the economic front.

4. Robyn Stewart-Murray, quoted in Norm Alster, "The Valley of the Spies," *Forbes*, October 26, 1992, p. 204; author quotes Cris Castro, executive director, Mantech Strategic Associates, San Mateo; note also remarks by John O'Laughlin, ex-FBI agent and director of corporate security, Sun Microsystems, Palo Alto, Calif.



a "smart-pen" and electronic pad in their hotel room while they went out to dinner. When they returned, the computers had been stolen. In a Houston suburb, an off-duty cop spotted two men rooting through the garbage can behind a private home; they looked too well-dressed to be homeless. The cop took their license plate, which was traced to the French consulate. The house belonged to an executive of Texas Instruments. The consul-general, Bernard Gillet, said the two Frenchmen were collecting grass clippings to fill an unsightly hole in the consulate garden.<sup>5</sup>

### Groupe Bull in Deep Merde

The beneficiary of these dirty tricks was Groupe Bull. Despite long-standing suspicion that the company was deeply implicated in industrial espionage, the U.S. Air Force in September 1992 awarded the largest ever contract for desktop computers to Bull's U.S. arm, Zenith Data Systems (ZDS). The ensuing fray reveals much about the forces that drive and sustain economic espionage.

Originally, 22 companies had bid on the procurement, Desktop IV, for as many as 300,000 personal computers, software, peripheral equipment, and support services estimated at \$1 billion or more. Responding to intense scrutiny in Congress and the press, the Pentagon — hoping to avoid a procurement scandal like the \$600 hammers, \$1,000 toilet seats and billion-dollar boondoggles of recent memory — used a new, streamlined procedure to evaluate bids. It awarded the contract to two small companies, CompuAdd Corp. of Austin, Texas, and Sysorex Information Systems, Inc., Falls Church, Virginia, in November 1991. The big losers, including ZDS, IBM, Apple, Memorex-Telex, AST Research, and GM's Electronic Data Services, protested and the award was set aside. In the interim, a vicious price war broke out among desktop vendors, prices tumbled, and the contract was opened to a second round of bidding, won by ZDS. Predictably, another round of challenges ensued.<sup>6</sup>

The losers raised the specter of foreign ownership and suggested that ZDS's access to the Air Force's classified information could compromise national security.<sup>7</sup> Given the technological cross-fertilization, transnational operations, and multinational cross-ownership of most of the bidders, the charge would be at best hypocritical. But in ZDS's case, it is not simply a red herring waved about by sore losers: Bull had a long record of industrial spying coordinated by the French government. A senior FBI official and the former head of French intelligence confirmed reports, first circulated in early 1990, that French intelligence agents collected industrial secrets from U.S. firms and passed them to Bull.<sup>8</sup>



L'Express

**"It would not be normal that we spy on the States in political matters; we are really allied. But in economic competition, in technological competition, we are competitors; we are not allied,"<sup>9</sup> said Pierre Marion, former head of DGSE. After his tenure as president of Air France, it was charged that the airline bugged its first-class seats to gather economic intelligence for the government.**

Although Bull had denied the accusation,<sup>10</sup> the weekly news magazine *L'Express*, broke the story in May 1990 and placed the blame at the feet of senior government officials trying to prevent the state-owned company from falling further behind its international competitors. In late 1986 or early 1987, the article revealed, the foreign intelligence service, DGSE, was tasked to steal anything that would help Bull. DGSE agents recruited senior managers and technical personnel working in the French subsidiaries of U.S. companies, including IBM and Texas Instruments.<sup>11</sup> For at least two years, these employees passed on sensitive research data and marketing information to DGSE, which turned them over to Bull.<sup>12</sup> In fact, Bull had been receiving stolen property since the 1960s as part of an ongoing criminal enterprise conducted by DGSE's dirty tricks bureau, Service 7. The operation included a dozen or so burglaries a day to snatch or copy documents left in Paris hotel rooms by visiting businesspeople.

5. *Ibid.*

6. Peter H. Lewis, "Air Force PC Contract for Zenith," *New York Times*, September 11, 1992; see also *European Report*, September 23, 1992; *Defense & Aerospace Electronics*, September 21, 1992.

7. "Foreign Direct Investment in the U.S. Aerospace/Defense Market," *Industries in Transition*, November 1992, p. 7.

8. Michael Wines, "French said to spy on U.S. computer companies," *New York Times*, November 18, 1990, p. A4.

9. Pierre Marion, *NBC News Expose*, September 12, 1991.

10. "France's Bull Denies Press Report of Spying Against U.S. Firms," *Wall Street Journal*, May 18, 1990, p. A7.

11. Jean Lesieur, "Le Scandal des Espions Français," *L'Express*, May 18, 1990. Coming Incorporated was later identified as a target; see "Air France Denies Spying on Travelers," *International Herald Tribune*, September 14, 1991.

12. Jay Peterzell, "When 'Friends' Become Moles," *Time*, May 28, 1990, p. 50.



The issue of Groupe Bull lay relatively quietly until 1991 when the former head of DGSE Pierre Marion confirmed the *L'Express* exposé and went it one better: He proudly admitted his service had directed espionage against U.S. commercial and industrial targets for many years. It was a matter of routine — and Bull, among others, was the beneficiary.<sup>13</sup>

Marion indignantly denied a companion report that DGSE agents, sometimes posing as crew or passengers, planted hidden microphones and transmitters in the first-class cabins of Air France's international flights to gather political intelligence and commercial secrets. That allegation, attributed to unnamed U.S. intelligence experts, was dismissed as ridiculous by the airline. "It is quite absurd to think we would put microphones in our seats," a spokesperson said. "We categorically deny the charge that we have ever spied on our passengers." He added, "We have no knowledge that any of our staff belonged to the secret service."<sup>14</sup> This pique was, at best, disingenuous, given Service 7's recruitment of Air France pilots in a long-standing scheme to fly their planes off-course so that sensitive installations in other countries could be photographed.<sup>15</sup>

The French attitude was what came to be known in the Watergate era as a "non-denial denial": "We didn't do it, but if we did, it was a long time ago and we stopped, and we promise never to do it again." If they had stopped, they were soon back at it. Milton J. Socolar, special assistant to the Comptroller General, said during the 1980s, the French intelligence agency had targeted IBM and other U.S. companies in France and even in the U.S., DGSE agents passed data on IBM's coming generation of PCs to Bull.<sup>16</sup> "This was just business as usual for the DGSE," a special agent of the General Accounting Office said.<sup>17</sup>

### Same Old Bull

France has put varying degrees of emphasis on economic spying during the post-World War II era. Its first major effort grew out of the Gaullist conviction, shared by the Socialists, that economic, military and political power were coeval and interdependent bases of national security. In his triumphant return to power in 1958, Charles de Gaulle reorganized the French intelligence services toward this end. The Service for External Documentation and Espionage (SDECE) was ordered to step up its rather informal operations to obtain technological information from the U.S. and Western Europe for France's nuclear weapons and other programs. What distinguished the Gaullist effort, especially in its later refinement by the Socialists, was its open collaboration with French

business interests which, like Bull, stood to gain from the partnership.<sup>18</sup> When de Gaulle gave Gen. Grossin his marching orders, the chief of SDECE advised the boss that he had neither the personnel nor the apparatus for the job. Grossin was told to recruit people with economic, scientific and technical training from other ministries, but civil servants considered the idea repugnant. SDECE's dirty tricks bureau, Service 7 — originally created to open diplomatic correspondence between countries and their embassies in France — using the latest electronic techniques along with old-fashioned black-bag jobs, made acquisition of economic information part of its mission.

The U.S. learned it was a target of French intelligence from Anatoly Golitsyn, who defected from the KGB in 1962. He told his debriefers that the Soviets had thoroughly penetrated DGSE, including Service 7. The Soviet operation, directed at U.S. scientific and military secrets, turned the Gaullist's "independent" espionage into a cat's paw of the KGB's First Directorate. Golitsyn's revelations were passed to the SDECE's Washington station chief, Philippe Thyraud de Vosjoli. He was in a bind: If he followed instructions and cooperated with Service 7, he feared the information would be passed to the KGB by its moles. When he refused to cooperate, his superiors suspected he had been turned by the CIA. If not true at the time, it was a self-fulfilling prophecy: Fearing execution after he was ordered back to France, in 1963, he defected, hid in Mexico, and dodged the hit teams of the Action Service's Red Hand, which had eliminated dozens of Algerians and their sympathizers. When the U.S. gave him asylum and a new identity, it only confirmed the suspicions of his superiors.<sup>19</sup>

After the Golitsyn-de Vosjoli imbroglio, the SDECE lost some of its stomach for economic espionage. Its officers and "honorable correspondents" overseas were more content with organizing *coups d'état* through mercenaries in Central Africa, such as the secession of Katanga from Congo and

13. *NBC News Expose*, September 12, 1991; see also James Adams, "France steps up spying on both friends and foes," *The Sunday Times* (London), April 5, 1992, p. 1.

14. "Air France...," *International Herald Tribune*, *op. cit.*

15. Roger Faligot and Pascal Krop, *La Piscine: The French Secret Service Since 1944* (New York: Blackwell, 1988), p. 193.

16. Cited in Bill Gertz, "Friends, foes said to employ business spies," *Washington Times*, April 30, 1992, p. A3.

17. Robyn Stewart-Murray, quoted in Alster, *op. cit.*, p. 201; "The Open Barn Door," *Newsweek*, May 4, 1992, pp. 58-59.

18. Only lately, with the dissolution of the Soviet Union and its bloc, have U.S. officials, by contrast, come to elaborate a doctrine of national security that proclaims economic espionage as part of the mission of the intelligence agencies in gathering positive intelligence. Previously, the issue was couched in terms of counterintelligence operations designed to deny U.S. technology and data with military applications to those foreign countries specified as hostile under the Arms Control Act and export regulations. The regulation of exports fell to the State Department's Office of Munitions Control, in consultation with the Defense Department, while enforcement ran the gamut from the FBI to the Customs Service, to the ATF. The law was honored in the breach by the CIA when policy considerations and presidential directives overrode rhetoric about keeping dangerous stuff out of the hands of terrorists. The official position of the CIA and NSA declared commercial information off-limits. See, e.g., comments of ex-DCI Stansfield Turner, in Peterzell, *op. cit.*, and the confirmation hearings of Robert Gates as DCI, Senate Intelligence Committee, 1991.

19. Faligot, *op. cit.*; and Nigel West, *Games of Intelligence* (New York: Crown, 1990). Golitsyn's defection is examined by the man himself, *New Lies for Old* (New York: Dodd-Mead, 1984); by a convert to former CIA counterintelligence chief James Angleton's self-destructive mole-hunt, Edward J. Epstein, *Deception: The Invisible War Between the KGB and the CIA* (New York: Simon & Schuster, 1989); by a skeptic, David Martin, *Wilderness of Mirrors* (New York: Harper & Row, 1980), and by debunkers of a series of false defectors who provoked splits within CIA and between Western agencies, William R. Corson, Susan B. and Joseph J. Trento, *Widows* (New York: Crown, 1989). De Vosjoli's version, *Lamia* (Boston: Little, Brown, 1970) backs Golitsyn — and their mutual patron, Angleton.



Biafra from Nigeria, the installation of the dictator Bokassa in the Central African Republic, and others in Mali and Chad.<sup>20</sup>

During his tenure as head of intelligence, 1981-86, Pierre Marion reestablished the importance of economic intelligence by adding a third directorate (in addition to *General and Operations*) for *Planning, Forecasting, and Evaluation*. Though relatively small, this new branch had a mandate from President Mitterand to intensify efforts to collect scientific and technological intelligence with economic as well as military value. Marion had taken over the service in 1981, from Count Alexander de Marenches, an "Atlanticist" whose political affinities lay with the right and the CIA.<sup>21</sup>

After a decade of his leadership, the triumphant Socialists — François Mitterand, *et al.* — feared, not without reason, that SDECE had degenerated into a haven of fascist hysterics and military retainers inimical to their right to govern. A decree from the Elysee abolished SDECE in April 1982 but established the DGSE under

Marion. Before he was abruptly fired near year's end, Marion had directed the new directorate to approach its mission with an urgency in direct proportion to *la malaise* of the economy.

Two examples illustrate the importance of the DGSE's operations during the 1980s: In 1985, India deported a French diplomat after breaking, perhaps with American help, a spy ring that implicated three aides to Prime Minister Rajiv Gandhi. The French bought information, including details of an American company's bid on a deal to supply jet fighters to the Indian Air Force. The French state-owned company, Aerospatiale, won the billion-dollar contract.<sup>22</sup> That same year, British agents turned the tables by passing details of a French aircraft offer to the Saudis. This allowed British companies to win the contract, which grew into a \$30 billion

series of deals for weapons systems.<sup>23</sup> More recently, French agents were alleged to have tried to steal data on radar-evading "stealth" technology in the U.S.<sup>24</sup> The French also increased reconnaissance by aircraft and satellite, including remote sensing of targets in both Europe and the U.S.<sup>25</sup>

### Serving the National Interest

So there was nothing unusual in the French Government's 1986 directive to DGSE to aid the state by stealing for Bull, its crippled computer company. The CIA and FBI dispatched teams to investigate the incidents in late 1989 and the State Department fired off a confidential protest note to the French

government. After the 1990 *L'Express* story, W. Douglas Gow, assistant FBI director for foreign counter-intelligence operations, confirmed the account, but declined to elaborate. The affected companies buttoned their lips officially, but their security experts were not so diplomatic: "There's no question that they have been spying on IBM's transatlantic communications and

handing the information to Bull for years," said Robert Courtney, formerly with IBM.<sup>26</sup>

Many legal scholars, political analysts and commentators have said the industrial espionage scandal exemplifies the alienation of the centralized French state from the populace over which it rules: Excessive secrecy in the formulation and implementation of policy, lack of accountability, subordination of ethical norms to commercial considerations, and justification of official criminality on grounds of "national security" reduced to crude self-interest — these traits transcend the government of the moment and contradict the trappings of parliamentary democracy; they have come to embody the state, the bureaucracy that serves it, and the political parties of which it is composed. These qualities are not uniquely French, as events in the U.S. so aptly illustrate. But in France, the ideology and apparatus of national security are open and accepted. National security constitutes a kind of meta-apologia, excusing and rationalizing all that "serves France" and condemning anything perceived as a threat to national pride and well-being. \*

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*The French attitude was what came to be known in the Watergate era as a non-denial. "We didn't do it, but if we did, it was a long time ago and we stopped, and we promise never to do it again."*

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20. Faligot, *op. cit.*, pp. 191-209.

21. De Marenches purged half of the 2,000-man force and computerized the SDECE's data processing — with help from Bull. De Marenches' pet project was the "Safari Club," a consortium formed with the secret police of the Shah of Iran, Saddam Hussein of Iraq, Anwar Sadat of Egypt, and the Saudi intelligence service run by Kamal Adham (later famous as a key player in the machinations of the rogue Bank of Commerce and Credit International, BCCI). The Safari Club plotted with the Portuguese fascists to overthrow President Sekou Touré of Guinea and to assassinate Amílcar Cabral, leader of the independence movement in Guinea-Bissau. They backed the dictator Siad Barre in Somalia. They tried to kill Libyan Col. Muammar Qaddafi. They schemed to prop up the Shah. They forged a strategic alliance with BOSS, the Gestapo of South Africa's apartheid — all in the name of stopping the spread of Soviet influence. (*Ibid.*, pp. 245-76.)

22. Jeffrey T. Richelson, *Foreign Intelligence Organizations* (Cambridge, Mass.: Ballinger, 1988), p. 162, citing Steven R. Weisman, "3 Frenchmen Linked to Indian Spy Case," *New York Times*, January 24, 1985, p. A-3; Sanjoy Hazarika, "France Recalls Aide in India After Report of Spying Link," *New York Times*, January 21, 1985, p. A9.

23. Faligot, *op. cit.*, pp. 282-86.

24. Alster, *op. cit.*, p. 200; "The Open Barn Door," *op. cit.*, pp. 58-59; and Department of Defense Security Institute, *Recent Espionage Cases: Summaries and Sources*, March 1989.

25. Richelson, *op. cit.*, pp. 172-73.

26. *Ibid.* For comments on the general problem, see DoD Security Institute, *op. cit.* With specific but passing reference to Bull, see Daniel P. Scuro, "Allies... or Enemies?" *Security Management*, January 1992, p. 78; "Votre Secrets, Monsieur?" *Security Management*, October 1992, pp. 35-36; and Michael Alexander, "Industrial espionage with U.S. runs rampant," *Computerworld*, March 4, 1991, p. 64.



# Law Enforcement or Desktop Surveillance?



## The NSA's Clipper Proposal

David Sobel

*In a digitally linked world, where encryption is the key to privacy, banning encryption may be like banning privacy.*

Rep. Edward Markey (D-Mass.), Chair, House Telecommunications Subcommittee.<sup>1</sup>

As the U.S. geared up for war after Japan's attack on Pearl Harbor, thousands of U.S. government censors opened over a million pieces of mail daily. In their search for coded messages, the examiners routinely rearranged postage stamps to foil secret messages, and purged envelopes of potentially subversive items such as crossword puzzles, knitting instructions, children's grade reports, and Christmas wish lists.<sup>2</sup> Fifty years later, the U.S. is on the verge of revisiting this strange juncture in its history as paranoia over the proliferation of cryptography — the science of making and breaking secret security codes — once again leads to extreme measures. In this electronic age, however, microwave satellite and computer chip technology have replaced human censors as "big brother."

The government has always put a very high priority on cryptography. Advanced technologies — such as super-computers, semiconductors, fiber optics, advanced machine tools, and cryptography — are key to the U.S. commercial competitiveness which has become part of the intelligence agenda. With the world increasingly dependent on electronic communications, cryptography has proliferated to the civilian sector and the intelligence agencies are scrambling to regain control. Their targeting of civilian cryptography has spawned an unlikely alliance among civil libertarians, computer hackers, and computer software manufacturers concerned with privacy and/or profits.

### Target: Civilian Cryptography

On April 16, 1993, President Clinton announced that "government engineers" had developed a new cryptographic device for telephone security called the "Clipper chip" (a chip for computer modems called "CAPSTONE" is soon to follow<sup>3</sup>). Clinton

announced that Clipper would "improve the security and privacy of telephone communications while meeting the legitimate needs of law enforcement."<sup>4</sup> While the underlying technology is quite complex (see box, p. 52), the basic concept behind the Clipper chip is that two "trustworthy," independent "escrow agents" (still undesignated) would each hold half of the secret "key" necessary to decipher an encrypted transmission. Upon presentation of a court order, the "escrow agents" would turn over their halves to the government, which could then open the "locked" communication.

From the government's perspective, the Clipper chip seems like a reasonable approach to communications security: It would make sophisticated cryptographic technology widely available while preserving the ability of law enforcement agencies to execute court-authorized wiretaps. Upon closer examination, however, the plan appears to be the intelligence community's latest attempt to restrict the development and dissemination of effective civilian cryptography: The Clipper technology was developed by the National Security Agency (NSA) and the underlying technical data is classified.

### Civilian vs. Military Technology

NSA has always fought to prevent broad availability of codes and ciphers. Modern cryptographic technology — a mathematical process involving the use of formulas, or algorithms — was initially embraced by the government to protect the confidentiality of military and diplomatic communications.

Electronic communications are now widely used in people's homes and businesses, and have become an integral component of the global economy. Computers store and exchange an ever increasing amount of highly personal information, from private correspondence to medical and financial data, which can be protected against interception to a degree never imagined when the traditional legal notions

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1. John Mintz and John Schwartz, "Chipping Away at Privacy?" *Washington Post*, May 30, 1993, pp. H1,4.

2. David Kahn, *The Code-Breakers* (Signet: New York, 1967), pp. 276-80.

3. Julian Dibbell, "Code Warriors: Battling for the Keys to Privacy in the Info Age," *Village Voice*, August 3, 1993, p. 35.

4. Statement by the Press Secretary, The White House, April 16, 1993, (hereinafter, White House).



of "search and seizure" were first developed. But electronic privacy and security can only be guaranteed if encryption technology is widely available and unencumbered by government regulation.

As an ever increasing flow of non-governmental, encrypted data traverses the global communications networks, even the tremendous computing power of the NSA could be overwhelmed. Already, home computer users can scramble data with the encryption capabilities of a variety of commercial software programs, such as Microsoft Windows for Workgroups and Word, Watchdog, Lotus Notes, and Norton Utilities. In fact, there are over 1.5 million copies of mass-market products that use sophisticated cryptography.<sup>5</sup> The only way for the government to stop, or reverse, its proliferation may be an outright ban, and the Clipper technology could be a step in that direction.

### Voluntary Surveillance

The government has not yet banned the development or use of non-Clipper cryptography, although it has alluded to the possibility.<sup>6</sup> Instead, it has made the Clipper plan voluntary to those willing to give the government their keys. But if, as the administration claims, the rationale behind the proposal is to

*Clipper is based upon the highly controversial premise that the government has an absolute right to obtain the "plaintext" of any private communication upon the issuance of a judicial warrant.*

prevent "terrorists, drug dealers, and other criminals" from evading court-approved surveillance,<sup>7</sup> a voluntary program is absurd. Given the choice between a cryptographic system to which the U.S. government holds the keys and another to which it does not, few "criminals" bent on evading detection would select the former. Likewise, software manufacturers fear that products with Clipper built in will be useless for export. No foreign company will buy a computer security program if the U.S. government holds the passkey.

Unless made mandatory, the plan, at best, will give law enforcement and intelligence agencies easy access to a

5. Jim Bidzos, President, RSA Data Security, Inc., electronic mail message to author, August 13, 1993.

6. White House, *op. cit.*

7. White House, *op. cit.*



Dolores Neuman

**Popular software products which incorporate sophisticated cryptography are in the hands of more than 1.5 million computer users.**

known quantity of communications — those made on equipment using the Clipper system. They could then focus their tremendous surveillance and deciphering efforts on communications which are not made on the government-approved system and thus are deemed suspect.

### National Security Agency Heritage

The NSA's reputation for excessive secrecy is well-known and well-deserved. In the years following the Second World War, the making and breaking of secret codes became a top priority for the national security establishment.<sup>8</sup> Based at Fort Meade, Maryland, NSA was created by President Truman in 1952 and tasked with primary responsibility for signals intelligence (SIGINT) — intercepting and deciphering the secret communications of foreign governments. (NSA's coextensive mission is to ensure the communications security — COMSEC — of sensitive U.S. government transmissions.) In the 41 years since its creation, NSA has worked hard to maintain a virtual monopoly in cryptographic technology within the U.S. The agency's efforts have extended into the area of export and trade policy where it has stepped on the toes of powerful corporations and pushed them to join with civil libertarians in opposition to restrictions on private encryption.

For export purposes, software programs with encryption capabilities are subject to the same controls as software explicitly designed for military purposes. Their export is governed by the International Traffic in Arms Regulations (ITAR) and administered by the Office of Defense Trade Controls at the State Department.<sup>9</sup> The ITAR "Munitions List" (an inventory of products and technologies with poten-

8. See Kahn, *op. cit.*

9. 22 CFR Parts 120-30.



## Chipping Away at Privacy

The Clipper chip proposal is one element in the Clinton administration's larger plan to oversee the development of new high-tech communication, encryption, and information technologies. The White House presents the plan—dubbed the National Information Infrastructure (NII)—as a way of enhancing personal privacy, aiding law enforcement, and "promot[ing] economic growth and the competitiveness of American industry in the global marketplace." Given the context of increased emphasis on economic intelligence and the heavy-handed involvement of the NSA, the effect may be somewhat different. Critics have charged that the NII's encryption programs may operate to invade personal privacy, circumvent law enforcement regulations, and extend government spying to the private sector. Here are some key ingredients of the encryption debate:

**Public Key Cryptography.** developed in the 1970s, is the prototype for many widely available privacy-enhancing programs. The sender encodes a message using a private key in combination with the recipient's publicly-known key. After traversing the electronic wires, the communication can be decrypted only by the intended recipient using his or her personal key in combination with the sender's public key.

**Key Escrow Cryptography.** The new government "key escrow" encryption programs, which took the NSA six years to design, are loosely based on the public key concept. Two "independent escrow agents" each hold half a key needed to decrypt a given file. Any communications made on a key escrow system (such as Clipper) are automatically channeled, in code, to a government databank which cannot be accessed without both escrow keys. Key escrow is no substitute for the security offered by the public key systems because it gives a third party—the government—a passkey.

**Skipjack** is the cryptographic algorithm, or formula, on which key escrow cryptography is based. It is classified SECRET by NSA.

**Clipper Chip.** In the first phase of the "key escrow" encryption policy, AT&T will market telephones containing the government's Clipper chip. Communications from one Clipper unit to another, when recorded, will be unintelligible digital noise until decoded. The program is tantamount to the government installing a listening device in people's homes and, with a wink, promising not to eavesdrop without a court order.

**CAPSTONE.** The NSA calls its newest "key escrow" chip "big, complex and powerful." CAPSTONE was developed for computer modems to track electronic communications, in much the same way that Clipper monitors telephone conversations. NSA expects it to be commercially available later this year.

—Carl Deal

tial military applications) includes a wide range of commercial software with encryption capabilities.<sup>10</sup> Under this export licensing scheme, NSA is allowed to review license applications for these "information security technologies" and has virtual veto power over the issuance of export permits.<sup>11</sup>

Angry software industry representatives claim that these NSA-imposed restrictions on crypto-technology are stifling innovation, causing U.S. companies to lose out on foreign markets. Economics writer Robert Kuttner noted:

Restricting the ability of domestic manufacturers to commercialize and export new technologies no longer assures that advanced technologies will stay out of unfriendly hands: It only diverts the business to Japanese or European manufacturers who don't share America's view of technological security.<sup>12</sup>

In addition to export controls, NSA represses crypto-innovation in the name of "national security" under the Invention Secrecy Act. This little-known law, enacted in 1952, the year of NSA's birth, authorizes the Commissioner of Patents and Trademarks to withhold patents on new inventions and

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*By some accounts, NSA is capable of acquiring and automatically scanning all of the electronic messages that enter, leave, or transit the U.S.*

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to order that they be kept secret indefinitely, "as the national interest requires." Violation of a patent secrecy order is punishable by two years' imprisonment and a \$10,000 fine.<sup>13</sup> As a Justice Department representative told a congressional subcommittee in 1980, "What the Invention Secrecy Act says, in effect, is that there are some inventions that are too dangerous to be disclosed in the way that a patent normally discloses the invention."<sup>14</sup>

The number of secrecy orders issued under the Invention Secrecy Act remained relatively constant from 1952 until 1979, when 3,513 were in place. But by 1986, concurrent with the explosion of information technology, the number of

10. Fred Greguras and John Black, "The Encryption Export Maze: Red Tape, Requirements, Restrictions," *INFOSecurity Product News*, June 1992.

11. John A. Adam, "Cryptography = Privacy?" *IEEE Spectrum*, August 1992, p. 34 (reprinted statement of NSA).

12. Robert Kuttner, "Spooks and Science: An American Dilemma," *Washington Post*, August 20, 1989, p. B8; see also Robert Kuttner, "How 'National Security' Hurts National Competitiveness," *Harvard Business Review*, January-February 1991, p. 140.

13. 35 U.S.C. Sec. 181, *et seq.*

14. "The Government's Classification of Private Ideas," Hearings before a Subcommittee of the House Committee on Government Operations, 96th Cong., 2d Sess. (hereinafter cited as "Private Ideas"), p. 258 (testimony of H. Miles Foy, Office of Legal Counsel, Department of Justice, 1980).



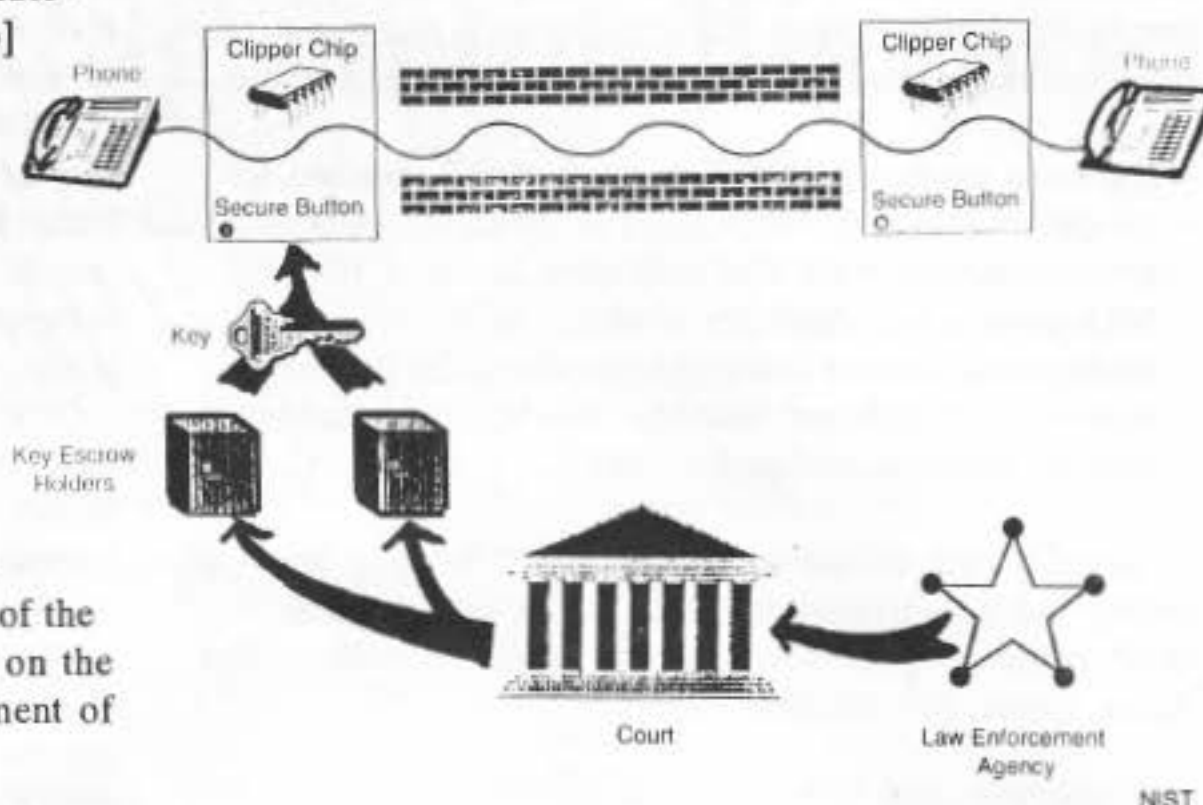
active orders had reached 4,685.<sup>15</sup> These orders, many aimed at cryptography and instigated by NSA,<sup>16</sup> have undermined the basic function of the patent system: "[to] stimulate ideas and the eventual development of further significant advances in the art."<sup>17</sup>

In 1987, Congress explicitly sought to counter NSA's intrusion into civilian cryptography by assigning oversight authority to the National Institute of Standards and Technology (NIST), a civilian agency within the Commerce Department. The Computer Security Act (CSA), ostensibly removed the impediments to civilian technological innovation — e.g., national security claims, import-export and patent controls.<sup>18</sup> The act specifically aimed to "greatly restrict" the influence of the military intelligence agencies.<sup>19</sup> The House Report on the CSA noted that NSA's involvement in the development of civilian computer standards

could have a chilling effect on the vigorous research and development that is ongoing in the academic community and the domestic computer industry [whose] rapid technological advances have been due in large part to being free to openly exchange ideas without government interference. NSA's inherent tendency to classify everything at the highest level is bound to conflict with this broader goal. [Also of concern was NSA's] natural tendency to restrict and even deny access to information that it deems important would disqualify that agency from being put in charge of the protection of non-national security information in the view of many officials in the civilian agencies and the private sector.<sup>20</sup>

Finally, in passing the CSA, Congress tried to prevent NSA from "us[ing] its considerable foreign intelligence expertise within this country," noting that "it has, on occasion, improperly targeted American citizens for surveillance."<sup>21</sup> This concern echoed the observation of Sen. Frank Church who, during his investigation of the intelligence agencies in 1975, warned that Congress has a "particular obligation to examine the NSA, in light of its tremendous potential for abuse. ...The danger lies in the ability of NSA to turn its awesome technology against domestic communications."<sup>22</sup>

## Clipper Chip Solution



### Alternative Technologies Readily Available

If passing the CSA was truly an attempt to clip the NSA's wings, it has fallen short of that goal. Clipper is not the first cryptographic product developed by the government for the civilian sector since the act passed. Nor is it the first to be co-opted by the NSA. In August 1991, NIST had announced the "digital signature standard" (DSS), a method of authenticating electronic transmissions, much as a written signature verifies the authenticity of a paper document.<sup>23</sup>

At first, it seemed the DSS was actually developed by the civilian NIST. However, when Computer Professionals for Social Responsibility (CPSR) — a public interest group concerned with technology issues — filed suit under the Freedom of Information Act, NIST admitted that most of the documents relevant to the DSS had originated with the National Security Agency. As a result, NSA publicly acknowledged the leading role it played in developing the proposed DSS:

[NSA] evaluated and provided candidate algorithms [the mathematical key on which the standard is based] including the one ultimately selected by NIST.<sup>24</sup>

Heavily censored documents released in the CPSR lawsuit strongly suggest that the intelligence agency did more than just "select" the DSS algorithm, but mandated its adoption as a federal standard.<sup>25</sup> The new digital signature standard was actually inferior to, and incompatible with, an established and widely used alternative known as RSA public-key technology. Cryptography experts, including those at NIST, had long recognized the superiority of the existing RSA technology and its status as the *de facto* authentication standard.<sup>26</sup>

15. Gary L. Hausken, "The Value of a Secret: Compensation for Imposition of Secrecy Orders under the Invention Secrecy Act," 119 *Military Law Review* (Winter 1988), p. 201, fn.10 (446 new orders were issued in 1986 compared with 293 in 1979).

16. "Private Ideas," *op. cit.*, pp. 406-31; Lee Ann Gilbert, "Patent Secrecy Orders: The Unconstitutionality of Interference in Civilian Cryptography under Present Procedures," *Santa Clara Law Review*, Spring 1982, p. 325.

17. *Kewanee Oil Co. v. Bicron Corp.*, 416 U.S. 470, 481 (1974).

18. Public Law 100-235 (1987).

19. H. Rep. No. 153 (Part 2), 100th Cong., 1st Sess. 7 (1987).

20. *Ibid.*, pp. 7, 21.

21. *Ibid.*, pp. 6-7.

22. "The National Security Agency and Fourth Amendment Rights," Hearings Before the Senate Select Committee to Study Governmental Operations with Respect to Intelligence Activities, 94th Cong., 1st Sess. 2, Vol. 5, p.2., 1975. (Statement of Sen. Church).

23. 56 *Fed. Reg.* 42981 (August 30, 1991).

24. Unpublished letter from Michael S. Conn (NSA Chief of Information Policy) to Mitch Ratcliffe (*MacWeek*), October 31, 1991.

25. Minutes of the NIST/NSA Technical Working Group (on file with author).

26. Comments submitted to NIST by Professor Martin E. Hellman, an inventor



Many believe that it is precisely because of its widespread availability and utility that RSA was undermined by NSA in favor of the DSS. Indeed, *IEEE Spectrum*, a respected computer science magazine, has reported that the RSA technique

had been readied by NIST as the [federal] standard for several months and was dropped in December 1989 with no alternative in sight. Not until early spring of 1991 did NSA present the algorithm of choice to NIST. Even on background, sources declined to detail reasons behind the decision, although one mentioned that legitimate national security factors had come into play.<sup>27</sup>

Another trade magazine reported that following "years of testing and proven reliability, RSA is now used by the majority of software makers around the world, including IBM, Apple, Lotus, Sun and Microsoft."<sup>28</sup>

### Banning Privacy

While the DSS was designed for the relatively limited purpose of "signing" electronic messages, the Clipper technology has been proposed as the national encryption standard — the very heart of the privacy protection that will be built into the nation's information infrastructure. If Clipper becomes the *de facto* encryption standard, the Fourth and Fifth Amendment protections against unreasonable search and seizure, and self-incrimination could be threatened.

On the philosophical level, Clipper is based upon the highly controversial premise that the government has an absolute right to obtain the "plaintext" of any private communication on the issuance of a judicial warrant. Such a principle, if accepted, would mean that the only right to privacy citizens enjoyed would be in face-to-face communications. As cryptographer Whitfield Diffie told Congress:

No right of private conversation was enumerated in the Constitution. I don't suppose it occurred to anyone at the time that it could be prevented. Now, however, we are on the verge of a world in which electronic communication is both so good and so inexpensive that intimate business and personal relationships will flourish between parties who can at most occasionally afford the luxury of traveling to visit each other. If we do not accept the right of these people to protect the privacy of their communication, we take a long step in the direction of a world in which privacy will belong only to the rich.<sup>29</sup>

of "public-key" cryptography, dated November 12, 1991, reprinted in *Communications of the ACM*, July 1992, pp. 47-49. See also, Comments submitted to NIST by Fischer International Systems Corp., dated November 26, 1991; and Memorandum from Roy Saltman to Lynn McNulty dated December 22, 1989 (internal NIST document on file with author).

27. Adam, *op. cit.*, p. 29.

28. "Debating Encryption Standards," *Communications of the ACM*, July 1992, p. 34.

29. "The Impact of a Secret Cryptographic Standard on Encryption, Privacy, Law Enforcement and Technology," Testimony of Whitfield Diffie, Sun Microsystems, before the Science Subcommittee of the House Committee on Science, Space and Technology, May 11, 1993.

Even if we take the government at its word that it will not pry without a court order, there are serious implications for civil liberties. The National Security Agency, which developed the Clipper technology, shares a long history with the FBI and CIA of illegal and unauthorized spying on private individuals and organizations. Its ability to monitor communications is vast, as is its budget — which is probably the largest of any intelligence agency. By some accounts, NSA is capable of acquiring and automatically scanning *all* of the electronic messages that enter, leave or transit the U.S.<sup>30</sup>

Why then would NSA, after having fought against any public use cryptography systems that would interfere with its SIGINT responsibilities, promote a technology that can only be broken upon court approval? Suppose, for example, agents of a hostile foreign government purchased Clipper devices in the U.S. and shipped them abroad. NSA would be unable to decrypt foreign communications without, itself, first obtaining the two halves of the "escrow" keys by court order. So unlikely is it that NSA would limit its own ability to spy, when and where it wishes, that many suspect the chip has a "trap door" to provide the agency with an alternative, extrajudicial means of entry.<sup>31</sup>

### Another National Security Junkie President

With or without a trap door, many observers believe that NSA's efforts to control cryptography will prove futile. As William Frezza of Ericsson-G.E. Mobile Data Inc. (an information technology firm) told the *Washington Post*, "The genie is already out of the bottle. We're all going to look back on this date in five years and laugh that anyone tried to control this technology."<sup>32</sup> While the anti-Clipper coalition may succeed and shut down the current proposal, the issues that Clipper raised will remain. If civil libertarians are not fortunate enough to have the coincidental support of corporations in opposition to the next computer-age attack on privacy, as they do against Clipper, the electronic censors could easily prevail.

Meanwhile, the national security establishment seems to have won over yet another president to its belief that cryptography is a commodity that should be controlled by the government. Just as the Cold War sustained NSA's technological monopoly for 40 years, the specter of what President Clinton described as "terrorists, drug dealers, and other criminals" is providing a basis for the Agency's mission into the next century. •

30. David Burnham, *The Rise of the Computer State* (New York: Random House, 1980), p. 126. See generally James Bamford, *The Puzzle Palace* (Boston: Houghton Mifflin, 1982); "The National Security Agency and Fourth Amendment Rights," *op. cit.*; "Big Brother 1980 - The National Security Agency: The Biggest Eavesdropper of Them All — a CAIB Interview," *CovertAction*, Number 11, December 1980, pp. 35-43.

31. NSA's Director of Policy, Michael A. Smith, claims "unequivocally there is no trap door built into the algorithm. A trap door would be a vulnerability in the system, and would defeat the purpose of assuring the system provides U.S. citizens with excellent security." The cautious reader, however, should question Smith's reference to "U.S. citizens" and wonder if "excellent security" is analogous to unbreakable security. John Markoff, "U.S. as Big Brother of Computer Age," *New York Times*, May 6, 1993, pp. D1, D7.

32. Mintz and Schwartz, *op. cit.*, at p. H4.



# The CIA: Banking on Intelligence

Anthony L. Kimery

*The CIA has collected, and the intelligence community has collected, economic intelligence of one kind or another since its inception.*

— Director of Central Intelligence, R. James Woolsey<sup>1</sup>

**T**he CIA has never been above breaking the law as it battles communists, nationalists, terrorists, or the latest “national security threat”: foreign-directed economic and financial subterfuge. This growing economic focus comes at the bidding of many voices in the CIA, Pentagon, and corporate community who believe the U.S.’s primary intelligence mission should be to help industry compete in the global marketplace. There has been little public discussion, however, over just when corporate competition becomes a sufficient threat to the national security to unleash the corruptible talents of the intelligence community into the world of international finance.

## “New” Intelligence Requirements: Old Practices

That line between “national security” and private financial interests has long been mutable and subject to the day-to-day needs of the CIA. For decades, the U.S. has used currency manipulations, embargoes, and other forms of economic pressure to undermine its foes. When the 1945 Bretton Woods agreement established the U.S. dollar as the international currency of the World Bank and International Monetary Fund, the U.S. secured enormous international financial leverage. It can direct intense fiscal pressure against foreign financial institutions, and even an entire national economy, by activating the global power of the Treasury Department and the Federal Reserve (along with the international financial institutions it controls). Witness the long-standing embargo against Cuba, the economic sabotage of Nicaragua in the 1980s, the illegal withholding of Panama’s canal revenues between 1987 and 1990, and the current international sanctions against Iraq. Economic motives have always driven U.S. covert operations. And bending banking regulations to the benefit of U.S. and foreign elites has been standard

practice. Thus, it should be no surprise that, despite questionable legality, both the National Security Agency (NSA) and the CIA already engage in extensive economic intelligence activities wherever U.S. national security interests are perceived to be at risk.

The practice of using existing U.S. intelligence agencies to gather economic and financial data through traditional spy methods was given a boost by the Reagan administration. Incoming CIA Director William Casey’s national security credentials were matched by his business background. Casey had been chair of the Securities and Exchange Commission, Undersecretary of State for economic affairs, and Import-Export Bank President. He ordered the Agency’s once modest National Collection Division (NCD) to recruit major corporate executives abroad to gather proprietary information on foreign businesses and the trade and economic policies of foreign governments.<sup>2</sup> This move made the NCD the largest information gathering program within the Agency’s operations directorate. By 1984, more than 150 corporations were providing cover for CIA people overseas.<sup>3</sup>

Also on Casey’s order, from 1982 through 1987, career CIA man Douglas P. Mulholland served at the Treasury Department as the chief liaison to the Agency.<sup>4</sup> The person in this position typically ensures that, should some low-level regulator stumble across banking law violations, CIA operations involving banks and other federally regulated financial institutions are not compromised.<sup>5</sup> No operations, it seems, were compromised on Mulholland’s watch. He retired from

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1. Confirmation hearing, Senate Select Committee on Intelligence, February 2, 1993.

2. Based on author’s interview with former senior CIA officer with firsthand information about this program; see Mark Perry, *Eclipse: The Last Days of the CIA* (New York: William Morrow, 1993), pp. 194-205. In the 1970s, Casey had been appointed by Gerald Ford to serve on the President’s Foreign Intelligence Advisory Board where he worked with Lionel Olmer. Reagan went on to appoint Olmer to serve as the Commerce Department’s Undersecretary for International Trade. As a result, the Commerce Department was able to provide cover abroad for some of the new CIA Director’s case officers. “Businessmen and Deep Cover,” *CovertAction*, Number 14-15, October 1981, p. 14.

3. Perry, *op. cit.*, pp. 196-97.

4. *The BCCI Affair: A Report to the Senate Committee on Foreign Relations* (hereafter *Senate Report*), September 30, 1992, Volume One, p. 375.

5. *Ibid.*



the CIA in 1987 to become a researcher for George Bush's presidential campaign, and later headed the State Department's Bureau of Intelligence and Research.<sup>6</sup>

### Treasury Joins the Inner Circle

While the Reagan and Bush administrations were able to maintain the CIA's budget in the name of anticommunism, the post-Cold War CIA has had to be more diverse. It has switched its emphasis to counterterrorism and economic intelligence.<sup>7</sup>

Bill Clinton wasted no time in elevating the "new" economic agenda to the highest level. For the first time, a treasury secretary, Lloyd Bentsen, became a member of the CIA's daily White House briefing. Previously, the briefing was reserved only for the president, the vice president, the national security adviser, and the secretaries of state and defense.<sup>8</sup> This move formalized a trend put in motion by Reagan and Bush, who had already brought the Department of the Treasury's intelligence unit and the CIA closer together.

Reagan had created a new agency at Treasury, the Financial Crimes Enforcement Network (FinCEN), with liaisons to the NSA, CIA, and the Defense Intelligence Agency (DIA). FinCEN compiles and analyzes the computerized financial disclosure data that banks are required to report to regulators under the Bank Secrecy Act and related money laundering laws. Its capabilities are staggering. For instance, when federal agents wanted to analyze patterns of cash deposits in New York City as part of a drug investigation, FinCEN's computers quickly isolated a single cash-rich neighborhood in Manhattan.<sup>9</sup> Its current director, Brian M. Bruh, is a former deputy assistant commissioner of criminal investigations at the IRS and served as chief investigator for the Tower Commission, President Reagan's official Iran-



Department of State

From 1982 to 1987, career CIA man Douglas P. Mulholland served at the Treasury Department as chief liaison to the Agency.

Contra probe. Under Bruh's leadership, FinCEN is expanding its capabilities. Los Alamos National Laboratory, on contract to FinCEN, is developing "artificial intelligence" capable of isolating specific financial activity within the millions of filings it has on computer.<sup>10</sup> Though technically a law enforcement tool, this new software could easily be used to spy on virtually anybody's personal or business financial transfers.

### Privacy and Computerized Tracking

While the development of computer programs to track financial transactions has opened a Pandora's box where civil liberties are concerned, barely a ripple of official protest has been logged. In 1991, Congress mandated an FDIC study of how to apply a computer-

ized tracking system of insured and uninsured deposits to law enforcement.<sup>11</sup> According to the latest draft of the FDIC's report to Congress, a tracking system could reveal "an individual's entire banking history." The FDIC cautions, however, that

because the sweep of a tracking system would encompass all bank depositors — those who are law-abiding as well as those who are not — each increment by which the system would aid in the administration of justice could incrementally infringe on personal privacy by an equivalent amount.<sup>12</sup>

While the FDIC opposes such a tracking system, it faces stiff opposition from the Departments of Justice and Treasury, the CIA, and other agencies that will lobby hard for access to private financial data.<sup>13</sup>

### BCCI: A Window on the Future

The CIA's largest banking fiasco — with the Bank of Credit and Commerce International (BCCI) — hints at how the intelligence agencies will handle their expanded economic

6. *Ibid.*, Part 11, pp. 368-79.

7. Although the exact figure is classified, a congressional source with firsthand knowledge says that economic intelligence accounts for an important percentage of the increased budget Clinton has proposed for the CIA.

8. Douglas Jehl, "It Takes a Good Host to Run a Spy Agency," *New York Times*, April 5, 1993.

9. William C. Rempel, "Taking the Cartel to the Cleaners," *Los Angeles Times*, Washington Edition, July 7, 1993; and author's interview with FinCEN official, 1993.

10. Author's interview with FinCEN official, 1993.

11. Federal Deposit Insurance Corporation Improvement Act (FDICIA) of 1991.

12. *Draft Report to the Congress on the Costs, Feasibility, and Privacy Implications of Tracking Deposits*, FDIC, June 1993.

13. Author's interviews with congressional sources, 1993.



mandate. It is no longer a secret that U.S. intelligence agencies used BCCI extensively for covert operations.<sup>14</sup> BCCI's CIA ties have sparked speculation that the Agency was one of the bank's original sponsors.<sup>15</sup>

The Senate Foreign Relations Committee's comprehensive report on the BCCI scandal leaves the impression that Casey's man in Treasury, Mulholland, in spite of his evasive answers to the committee's questions, knew when violations were made by BCCI and did not report them. This is especially evident in the case of BCCI's illegal 1980 takeover of First American Bank, the largest holding company in the metropolitan Washington area. All CIA intelligence on BCCI and the takeover was routed through Mulholland who, predictably, took no action.<sup>16</sup>

Once the bank scandal became public, the report reveals, BCCI was counseled by individuals well-connected to the intelligence establishment, including Michael Pillsbury and Karna Small. Pillsbury is a long-time Senate staffer with insider clout in the intelligence community. He served as an Assistant Secretary of Defense under President Ronald Reagan, and was a member of the 208 Committee, a top-secret interagency group that oversaw CIA covert operations and met in Room 208 of the Old Executive Office Building adjacent to the White House.<sup>17</sup> As a member of that group, Pillsbury concedes, he helped provide military assistance to the CIA-backed Afghan rebels, an operation for which BCCI was used extensively. Reagan fired him in 1986 for leaking word that the administration had decided to provide Stinger antiaircraft missiles to rebels in Afghanistan and Angola.<sup>18</sup>

During 1989 and 1990, as BCCI faced a federal indictment on money laundering charges, Pillsbury — then an aide to

Sen. Gordon Humphrey (R-N.H.) — offered BCCI's criminal defense team advice on handling the Senate Foreign Relations Committee's inquiries.<sup>19</sup> In addition, Pillsbury assisted Karna Small of Hill and Knowlton — the major public relations firm representing BCCI — to counter the "unfair treatment" of BCCI by the committee.<sup>20</sup> Small also has a background with the covert initiatives of the Reagan administration. During the mid-1980s, she had been press spokesperson for the National Security Council and National Security Adviser Robert McFarlane.<sup>21</sup>

The extent of the CIA's use of First American, an institution led by Democratic Party power brokers Robert Altman and Clark Clifford, was a particularly sensitive item during the congressional inquiry. The CIA's official use of the bank — independent of Agency ties to BCCI — was described as "extensive" in the Senate report. When it came time to publicly disclose BCCI's illicit takeover of the bank, however, the intelligence agencies scrambled to cover it up.<sup>22</sup> The CIA, NSC, and other intelligence agencies, when presented with requests from committee chair Sen. John Kerry (D-Mass.) for records on Noriega, refused to comply. The agencies feared that, if the records were divulged, too many questions would be raised about the CIA's ties to First American.<sup>23</sup>

#### Evidence Shredded by the Fed

The seriousness of government complicity with shady banks increases when agencies move, as they frequently do, to cover up such corruption. According to insider sources, Federal Reserve Board (Fed) files revealing BCCI's relationship to the CIA and NSC were shredded in 1988 and 1990.<sup>24</sup>

While the Fed has consistently claimed that it received little intelligence about BCCI, the Senate's BCCI report reveals that intelligence reports — some originating with the



14. For an official government position on the relationship, see *Senate Report*, Volume One, pp. 368-416.

15. Peter Truell and Larry Gurwin, "False Profits: The Inside Story of BCCI, The World's Most Corrupt Financial Empire," *Newsweek*, December 7, 1992, pp. 44-49; and Louis Wolf, "Bank Made Just for the CIA," *CAIB*, Fall 1991, p. 66.

16. *Senate Report*, Volume One, pp. 368-416. Similarly, regulators were kept in the dark about Abdul-Raouf Khalil, Saudi Arabia's liaison to the CIA. Khalil was a BCCI shareholder, front man, and a key nominee in BCCI's secret takeover of First American. Khalil's CIA ties prompted intelligence agencies to stonewall regulators' requests for information about him. When regulators asked the State Department to locate Khalil in 1991 so he could be served with legal documents, they were told he could not be located. "After some months," the report states, "the regulators determined that Khalil was frequently found in the offices of the CIA station chief in Saudi Arabia. Upon making this suggestion to the State Department, the regulators found that service of the legal documents on Khalil was quickly arranged." (*Ibid.*, pp. 384-85.)

17. *Ibid.*, Volume Two, pp. 640-59.

18. Laurence Zuckerman, "Washington's Master Leakers," *Time*, May 23, 1988, pp. 17-18.

19. *Ibid.*

20. Letter from Pillsbury to Small, January 11, 1990 (Exhibit 1136 to *Senate Report*); see Johan Carlisle, "Public Relationships: Hill & Knowlton, Robert Gray, and the CIA," *CovertAction Quarterly*, Number 44 (Spring 1993), pp. 23-24.

21. *Senate Report*, Volume Two, pp. 654-55.

22. Among First American's activities was its handling of wire transfers from BCCI's Iran-Contra accounts into an account for Lake Resources, the company set up by principal Iran-Contra players Oliver North and Richard Secord to finance arms to the contras. (*Ibid.*, pp. 371-72, 397-98.) First American also held accounts for Manuel Noriega, who had long been on the CIA's payroll. In Washington, BCCI's handling of Noriega's assets went through First American. (*Ibid.*, Volume Two, p. 636.)

23. Author's interviews with intelligence sources; also *Drugs, Law Enforcement and Foreign Policy*, a report by the Senate Foreign Relations Committee Subcommittee on Terrorism, Narcotics and International Operations, September 1989, pp. 97-112.

24. The sources include a Federal Reserve data management specialist, a former State Department officer with access to classified information, and two former senior CIA officers assigned to intelligence-gathering operations that involved BCCI



CIA — were indeed shared with Fed officers.<sup>25</sup> Investigators for the House Banking Committee posit that the Fed took no action against BCCI because the CIA and NSC were worried that covert operations would be exposed.<sup>26</sup>

The Fed's records manager acknowledges that CIA files on BCCI "mysteriously" disappeared in September 1988 after Sen. Kerry's subcommittee heard Amjad Awan, ex-manager of BCCI's branch in Panama, testify that bank officials laundered drug profits for Manuel Noriega. The same official also alleges that in 1990, someone at the Fed again destroyed and concealed documents on BCCI as the first stories about the bank's impending collapse hit the newsstands.<sup>27</sup>

Gustave Newman, Robert Altman's attorney, offers additional allegations of a Fed coverup. He claims that on March 30, 1993, a week before the Justice Department dropped key charges against Altman and Clark Clifford, Fed officials shredded evidence concerning First American's sale to BCCI. Additional documents in the possession of a senior Fed official were either withheld, or "vanished into thin air."<sup>28</sup>

### A Pattern of Abuse

The BCCI-First American scandal is only the best-known case of the CIA's use of banks to finance secret operations.<sup>29</sup> Four years before BCCI was exposed, a Baltimore banker, Robert Maxwell, blew the whistle on his employer. Maxwell claimed that in 1986, at the behest of the CIA, the First National Bank of Maryland (FNB) violated laws. The operation unraveled when Maxwell filed suit against FNB and the CIA in 1990. He charged that he was forced to quit as FNB's manager of international letters of credit when he questioned the legality of work he was asked to do for a bank account in the name of Associated Traders Corporation (ATC).<sup>30</sup> ATC, he alleged, was actually a CIA front used to finance covert operations. When Maxwell's attorney sought to obtain the bank's records on the company, the CIA filed for a protective order, claiming disclosure would damage national security. In April 1992, a federal court granted the motion, allowing the CIA's role to remain secret.<sup>31</sup>

and Italy's BNL, another bank embroiled in illicit activities involving the CIA.

25. *Senate Report*, Volume One, pp. 368-416.

26. Author's interviews with House Banking Committee staff members, 1992.

27. Author's interview, 1991.

28. Author's interview with Newman, 1993; and Sharon Walsh, "BCCI Defense Says Fed Lied," *Washington Post*, August 5, 1993. The existence of the intelligence operation involving the two banks is further established in classified CIA documents shown to the author. The documents state that the CIA and British intelligence "were deeply involved."

29. CIA connections to two failed Hong Kong banks are detailed in *Senate Report*, Volume One, Part 11. The "prime mover" of the creation of Hong Kong Deposit and Guaranty Co. and Tetra Finance in 1981 was the late John M. Shaheen, a former Navy captain who had worked in the OSS under Casey. Formed within days of Casey's selection as director of the CIA, the banks' directors had close, ongoing ties to the CIA, Saudi intelligence and BCCI. Not only did a key BCCI official assume a directorship of the two banks at the exact time he assumed a similar directorship of BCCI, but the two banks made use of the identical structures for doing business that BCCI adopted.

30. See Rebecca Sims, "Operatives and S&Ls: The CIA and Financial Institutions," *CovertAction*, Number 35 (Fall 1990), pp. 44-45; and Patrick Kiger, Jr., "The Banker, the Guns, and the CIA," *Baltimore Magazine*, August 1990.

31. Order of William M. Nickerson, U.S. District Judge for the District of Maryland in *Robert J. Maxwell v. First National Bank of Maryland, et al.*, April 29, 1992.

On June 12, 1986, Maxwell spent four hours with four Treasury Department officials in the International Banking and Finance Division of the Office of the Comptroller of the Currency (OCC) in Washington. They discussed Maxwell's allegation that the bank transferred millions of dollars in CIA funds to foreign bank accounts.<sup>32</sup> Maxwell also told the OCC that he believed the transfers were not properly reported and that some of the money was diverted to buy arms for the Nicaraguan Contra rebels. The balance, he says, ended up in Swiss and Panamanian bank accounts. This meeting occurred four months before the White House's secret support of the Contras became public.

The OCC agents who debriefed Maxwell subsequently met with Mulholland.<sup>33</sup> No enforcement action was taken against the bank. The OCC did later open an investigation, still ongoing, into FNB's relationship with ATC.<sup>34</sup>

While the Treasury Department ignored, even covered up, alleged violations involving the ATC account, it simultaneously fined FNB nearly \$1 million for numerous other currency transaction reporting violations under the Bank Secrecy Act.<sup>35</sup>

### Is the CIA Exempt from Banking Regulations?

The U.S. government's demonstrated ability to use economic intelligence and currency manipulations to control its enemies, and to violate banking regulations with few, if any, consequences raises the question of legal regulation. Without oversight or enforcement, banking regulators can turn a blind eye to violations of banking laws when a transaction involves the CIA or some other intelligence agency and throw the fundamentals of regulation out the window. Moreover, if a bank is allowed to break laws in the name of national security, what will deter that same bank — now an intelligence asset — from violating other regulations with the impunity offered by that shield?

The pattern is well-established in cases such as BCCI and FNB: Intelligence agencies and their operatives will invoke national security claims to avoid public scrutiny and to dodge criminal prosecution. The Bank Secrecy Act required First American and FNB to file currency and suspicious transaction reports, and possible criminal activity forms in the matter of Noriega's money laundering as well as their handling of Iran-Contra-related transactions. If they did file these forms, the regulators ignored them.

The near immunity to prosecution enjoyed by the intelligence community is partly a matter of slipping through legal loopholes which discourage enforcement. A key loophole in the Bank Secrecy Act of 1970 — amended in 1986 —

32. Author's interview with Maxwell, 1992.

33. *Senate Report* Volume One, pp. 368-416.

34. Treasury Department's response to a Freedom of Information Act request filed by the author. One of the banks to which Maxwell says he remembered making a \$5 million transfer from ATC's account was the Panamanian branch of a bank in which Noriega reportedly had hidden millions of dollars. Author's interview, 1992.

35. Timothy J. Mullaney, "1st National Bank Fined \$950,000 by Treasury," *Baltimore Sun*, March 4, 1992, p. B1; Treasury Department Office of Financial Enforcement press release.



allows Treasury to grant exceptions to the identification, reporting, and record keeping requirements of the act based on the following presumption: "Federal officers frequently conduct large currency transactions to help fund certain undercover operations, and because Treasury understands these officers' need to protect their identity."<sup>36</sup>

### A Telling Legacy

The historical precedents for making economics the centerpiece of U.S. intelligence bode ill. The intelligence community has long maintained cozy relationships with both the banking and financial community and their federal regulators. They have cooperated not only to hide funds for intelligence operations, but to use banking institutions to collect private data on customers. Equally disturbing are the recurring allegations — some backed by substantive evidence — that the CIA and its contractors have looted U.S. and foreign-based banks, and diverted some of the booty specifically for covert operations with neither congressional nor presidential authorization.<sup>37</sup> This legacy has been built over many years on a culture of secrecy and bolstered by lax oversight and legal loopholes which remain in place. With the Clinton administration firmly in their camp, the intelligence agencies and big business look forward to a future where they can dominate competitors and rivals, even whole governments, without firing a single bullet. •

36. Treasury Department Memorandum Letters from the Director, Office of Financial Enforcement, April 22, 1992, February 27, 1991.

37. From the earliest to the most recent accounts of the CIA's involvement in the establishment of banks to fund covert activities, see Jonathan Kwitny, *The Crimes of Patriots* (New York: Norton, 1987), and Pete Brewton, *The Mafia, CIA & George Bush* (New York: SPI Books, 1992); also Fred Dexter, "Oil Money, BCCI, and the CIA," *CovertAction*, Number 39, pp. 46-48.

(Nice Guys, continued from p. 8)

Woolsey need only remind himself of the CIA's early director, Allen Dulles, who came from a successful career as a Wall Street lawyer. His firm, Sullivan & Cromwell, held seats on the board of directors of United Fruit, among others. The firm virtually created the Republic of Panama at the turn of the century, and influenced policy in Latin America ever since.

When a liberal government in Guatemala threatened to redistribute United Fruit's uncultivated lands to the starving peasantry in 1954, the company made a few phone calls. The Secretary of State, John Foster Dulles, and his brother put together the CIA's first and most successful military *coup d'etat*. Old hands at Langley still tout the "Guat op" as a model for successful counterinsurgency: Minimum resources expended for maximum results. What they don't mention is that, in direct consequence, at least 100,000 Guatemalans, mostly indigenous, have been slaughtered by successive U.S.-backed military dictatorships.

The world — and the CIA — have indeed changed since then, but not necessarily for the better. The main difference is that extension of superpower contention into remote backwaters of the international economy no longer can be supported by an anticommunist rationale. Whether "economic security" includes industrial espionage, therefore, is a red herring. The rationale — they're doing it to us, so we have to do it to them — is an echo of the reflexive justification of U.S. intervention as "self-defense" against Soviet "aggression," and with the same goal: To provide a pretext for otherwise inexcusable acts of piracy, theft and murder. •

## Ex-CIA Man Turned Critic Seeks Presidential Pardon

Verne Lyon said years ago that he worked for the CIA from 1965 to 1975, first as a campus informant spying on antiwar activists at Iowa State University, then as an agent in Cuba. He was accused of planting a pipe bomb at the St. Louis International Airport in December 1966, an incident the CIA hoped would create a cover for him as an antiwar activist. According to Lyon, he slowly convinced Cuban authorities of his bonafides, and eventually spent six years in Havana working in a rainfall project (cloud seeding) to boost agricultural production. He also reported to the CIA on East Bloc scientific aid to Cuba. In 1970, in violation of CIA instructions, he married a Cuban woman.

In 1975, the Cuban government expelled Lyon, and from Canada he sought unsuccessfully to have his wife join him. The CIA twice tried to kidnap him and then convinced the Canadians to expel him. In 1977, with assistance from Peruvian authorities, the U.S. brought him from Lima to St. Louis for a much-publicized trial in the CIA-concocted

airport bombing charge. Railroaded through the courts and convicted, he was sentenced to 17 years. After six years in Leavenworth Penitentiary, he was granted parole.

Since then, he has directed the humanitarian work of the Des Moines Hispanic Ministry, a project of the United Methodist Church in Iowa, that provides food, shelter, and counselling for documented and undocumented Central American and Mexican workers. An officer of the Association of National Security Alumni, he lectures on the abuses of U.S. intelligence and the national security establishment. He has written for *CovertAction* about campus spying in the CIA's Operation CHAOS.

In April 1993, Iowa Governor Terry Branstad restored Lyon's state citizenship rights, and he is now seeking a presidential pardon and restoration of his full rights as a U.S. citizen. Letters to President Clinton in support of Lyon's pardon should be sent: c/o Diane Kuntz, 3303 Sir Thomas Drive, #42, Silver Spring, MD 20904.



## Smart Weapons / Neutron Bombs

In the debate over an optimum mix of weapons, Sam Cohen, American inventor of the neutron bomb and critic of reliance on "smart" weapons, refers back to the "Goering strategy"—the German bombing of London with long-range missiles. Then, as now, the price-tag for "smart" weaponry outweighs the rather marginal damage wrought. The efficiency of a modern "smart" weapons strategy is especially undermined by the availability of cheap and plentiful dummy targets capable of deceiving sophisticated missile technology. As offense and defense leapfrog each other, the dummy targets, of course, are identified and countered by escalating technology at ever-mounting cost. The bottom line, contends Cohen, is: The Iranians and Arabs have much more money than Israel.<sup>1</sup>

Rather than rely on "smart" technology, Aharonson advocates more cost-effective weapons such as Cohen's neutron bomb "which don't produce inordinately high temperatures and don't leave durable radioactive waste, but which are capable of killing enemy soldiers in their tanks in a small targeted area. Our use of such weapons will demonstrate to anyone concerned the firmness of our resolve to defend ourselves no matter what weapons we possess, without running short of them all in the process." The implication is that by using "radiation bombs," Israel would also signal its willingness to eventually use much more destructive nuclear bombs. The main drawback to "radiation bombs," Aharonson laments, is that "The Americans will never agree to it."<sup>2</sup>

1. Shlomo Gazit, *Yediot Ahronot*, April 27, 1992.

2. Yo'av Kaspi, "Hotam," *Al Hamishmar* (Friday Supplement), May 21, 1993.

The army's old strategic doctrine was overhauled in 1987 after "recommendations of a committee chaired by then Justice minister, [Dan] Meridor [Likud]."<sup>10</sup> Its implementation by the army, slowed first by the Intifada, was given a boost soon after the 1991 Gulf War. The revised doctrine, as interpreted by Aharonson, ranks threats to Israeli national security largely by geographical proximity. The faraway enemies include Iran, Iraq, Libya, and Algeria. Among these groups, whose threat is seen as somewhat less than that posed by bordering states, Iran — which got weapons from Israel until

the Gulf War — is now considered the most threatening. Aharonson recognizes that

Israel cannot — in accordance with Allon's doctrine of preemptive first strike — mobilize its entire army and dispatch it to fight a ground war in Iran. Likewise, the [Israeli] Air Force is not capable of seriously devastating Tehran using only conventional air raids. After all, this large, several millions-strong city withstood Iraqi air raids during the eight long years of war, without any significant anti-air defenses. It must also be remembered that Israel found no real answer to the grievous blows dealt by the Iraqi Scuds during the Gulf War.<sup>11</sup>

Aharonson is not alone in emphasizing the Iranian threat. Yo'av Kaspi, chief political correspondent of *Al Hamishmar*, reiterates the difficulty of expunging Iran's nuclear capability. In his article, "Iran needs to be treated just as Iraq had been," he interviews Daniel Lesham, "a retired senior officer in the [Israeli] military intelligence, and currently a member of the Center for Strategic Studies at the Tel Aviv University." Lesham, who has helped form Israeli strategy, notes that the Allied air raids did little in and of themselves to destroy Iraq's military and especially nuclear capabilities. Rather, the victory they secured allowed U.N. observers to go in and finish the job. Drawing a parallel, Lesham concludes:

The State of Israel alone can do very little to halt the Iranians. We could raid Iran from the air, but we cannot realistically expect that our aerial operations could destroy all their capabilities. At best, some Iranian nuclear installations could in this way be destroyed. But we couldn't possibly thus reach them all — not even their major centers of nuclear development — especially since that development has proceeded along three different lines in a fairly decentralized manner, with installations and factories scattered widely across the country. It is reasonable to suppose that we will never know the locations of all their installations, just as we didn't know it in Iraq's case.<sup>12</sup>

Aharonson no doubt took these factors into consideration when he concluded that "against its faraway enemies, Israel will have to rely, not so much on the conventional components of the Israeli army, as on other components of its national security: namely on nuclear deterrence, long-range missiles, and improved cooperation with the U.S. and neighboring states, such as Egypt or Turkey." Aharonson and his peers do not limit the possible use of Israeli nuclear weapons to Iran alone, but consider Syria and Syria's allies as other potential targets. How to deal with these "close enemies" is part of a debate on whether Israel should continue to count on traditional masses of armor, increase emphasis on "smart weapons," or deploy radiation or nuclear bombs (see box).

11. *Ibid.*

12. Yo'av Kaspi, *Al Hamishmar*, February 19, 1993.

10. Aluf Ben, *op. cit.*



## Building Coalitions Against Iran

Whatever military strategy it finally settles on, clearly Israel — in various degrees of coalition with the U.S. and Egypt — is exploring the means to destabilize Iran and neutralize the threat of its nuclear program. The Egyptian press has reported “the crystallization of a current Israeli-Egyptian plan to overthrow the Iranian regime with U.S. support.”<sup>13</sup> According to Menashe Amir, director of Israeli Farsi-language radio broadcasts to Iran, “there is some truth in such reports.” Amir, however, warns that any U.S. plans to forcibly overthrow the Iranian regime are

pretty unfeasible, even if the U.S. is supported in this scheme by several states in the Middle East which, like Egypt and Saudi Arabia, have their reasons to feel threatened by Tehran. Nevertheless, the chance of seeing this regime overthrown in the foreseeable future by forces from within — although not particularly high either — does exist. Iran is ripe for it.<sup>14</sup>

“Apparently the Americans still don’t have well-crystallized plans,” Amir continues, but the surest way to destabilize the already shaky regime is by exacerbating economic conditions for the Iranian masses through sanctions and other trade manipulations. Oil exports — 90 percent of the Iranian economy — are the most vulnerable pressure point. Another tactic, especially effective if used in conjunction with stimulating Iranian domestic opposition, said Amir, would be to persuade “Turkey or Pakistan to let their territories be used for military operations against their neighbor.”

Expanding on the need for Israel to form and exploit coalitions, Yossi Melman, *Ha’aretz*’s intelligence correspondent, author of several books and expert on Israeli intelligence, also noted the importance of Israeli-Turkish cooperation “against Iranian subversion” in countries to the north of Iran.

The western Europeans contribute to U.S. efforts to help finance implementation of Turkish aims in Central Asia. According to senior Israeli officials, Israel has been helping Turkey promote those aims in its own ways. ...Policy-makers in Israel believe that the U.S., Israel, and Turkey have a common interest in establishing a stable regional alignment of secular, moderate, and pro-Western regimes in the Middle East. As a recently issued document puts it, “Israel has an interest in strengthening Turkey for the sake of the common goal of curbing Islamic fundamentalism.”<sup>15</sup>

The same policy goals apply in Azerbaijan where Israel maintains good relations and a remarkable degree of influence.<sup>16</sup>

## Turning Nuclearization to Political Advantage

Nuclear proliferation is an important factor in the formation of coalitions around the Middle East. The fear of nuclearization, however, may actually be less important militarily and more important politically than first appears. The current Chief of Staff, Ehud Barak, advocated anti-Iran coalition building in 1984-85 when he served as the Military Intelligence commander in the final stages of the Lebanon War — before it was expected that Iran would nuclearize. This early emphasis on weakening relatively strong Middle East states suggests that Israel’s overarching goal was not simply to prevent nuclearization. Rather, Sneh, like Aharonson, contends that the coalition strategy was designed to enhance Israel’s hegemonic control over the region and to use the “peace process” as a tool in the Israeli grand strategy of war-making. Thus, Barak shares common ground with the government doves: a commitment to cooperating closely with the U.S. and to advancing the peace process. Aharonson is certain that this U.S.-Israeli collaboration includes American backing for the Israeli “option to threaten its faraway enemies” by nuclear means. In this he may be right, if by “Americans” he means the Pentagon, the CIA, and their firmest supporters. But as he himself describes it, “a strident anti-nuclear lobby exists in the U.S.”<sup>17</sup>

Aharonson sees a symbiotic relationship between the U.S. and Israel. In developing their nuclear weapons, he explains, Iran, Algeria<sup>18</sup> and Libya are motivated only by

their anti-Western ideology, which makes it reasonable to expect that those weapons may also be used against the U.S. and other Western states. The existence of a pro-Western power with its own nuclear capacity is going to considerably neutralize the Iranian or any other threat to the West. ...In view of that, Israel is in the position to convince the U.S. that the task of deterring our faraway enemies — which are also the enemies of the U.S. — by our own nuclear weapons and long-range missiles, should be reserved for ourselves.<sup>19</sup>

Daniel Lesham, a retired senior Military Intelligence officer and member of the Center for Strategic Studies at Tel Aviv University,<sup>20</sup> expands on the practical uses of the nuclear threat. There is both danger and opportunity in playing up Iranian terrorism to create a “situation which would appear similar to that with Iraq before the Gulf crisis.” Decrying the world’s relative indifference to Iranian “terrorism,” Lesham, who has been involved in policy formulation, hopes Israel will use its public relations machine “to explain to the

17. Yo’av Kaspi, *Al Hamishmar*, February 19, 1993.

18. Although Algeria is not “anti-Western” in the same way that Iran and Libya are, the present regime is hostile to Israel and supportive of the Palestinian cause. Algeria, for example hosts meetings of the Palestinian National Council including the last one in 1988. Given this alliance, the Israeli “party line” (*Hasbara*) seeks to persuade the West that Algeria is anti-Western.

19. Kaspi, *op. cit.*

20. *Ibid.*

13. Interview by Yossi Melman, *Ha’aretz*, May 13, 1993.

14. *Ibid.*

15. Yossi Melman, *Ha’aretz*, March 12, 1993.

16. Pazit Rabina, *Davar* (Friday Supplement), May 28, 1993.



world at large" how urgent is the need to persuade the world to provoke Iran into war.<sup>21</sup>

We should take advantage of [Iran's] involvement in the Islamic terror which already hurts the entire world. Right now, Israel has incontestable intelligence that the Iranians are about to resume kidnappings. We should take advantage by persistently explaining to the world at large that, by virtue of its involvement in terrorism, no other state is as dangerous as Iran. For example, I cannot comprehend why Libya has been hit by grievous sanctions — to the point that all sales of military equipment to it are barred — simply because of its rather minor involvement in terrorism; while Iran, with its record of guiding terrorism against the entire world, remains scot-free of similar, or even stricter, sanctions.<sup>22</sup>

Aharonson suggests the U.S. can help Israel demonize and isolate Iran by blockading Iranian coasts and by "stationing their warships and especially their nuclear submarines threateningly close to Iran."<sup>23</sup> Along the same lines, Ya'akov Erez, editor of *Ma'ariv*,<sup>24</sup> proposes that Israel persuade the U.S. to enforce an embargo on exports of weaponry and other industrial goods to Iran from any state, including North Korea.

Erez justifies the blockade — which he thinks could be activated "without particular difficulties" — as a necessary safeguard to "western oil supplies." For decades, the U.S. had used this scenario against the Soviets — vociferously charging that the USSR was poised to close off the supply of world oil by closing the Strait of Hormuz. In the same vein, Erez asserts that a U.S.-imposed blockade of Iran is important because the Iranian threat to oil resources "is really far greater than that caused by the invasion of Kuwait." If Iran were to get the bomb, Sneh argues, "all Arab Gulf states, and thereby the sources of Western oil supplies, would thus be exposed much more directly than they were at that time. It would no longer be a case of [Iraq] invading a single state [Kuwait] and seizing its oil fields, but a direct threat to all immense spaces of the Arabian peninsula and to the freedom of sailing in the Gulf."

This scenario is intended to goad the U.S. and the Middle East states into joining an Israeli-dominated alliance against Iran. Without that coalition or the overthrow of the Iranian regime through economic pressures and/or armed infiltrations, Israel might act unilaterally and possibly with nuclear weapons.

21. *Ibid.*

22. Lesham quoted by Kaspi, *op. cit.*, February 19, 1993. This analysis was written before the World Trade Center bombing and before the Libyan "pilgrims" arrived in Jerusalem.

23. Gazit, *op. cit.*

24. *Ma'ariv*, is a newspaper currently owned by Ofer Nimrodi, the son of Ya'akov Nimrodi. Before the fall of the Shah, Ya'akov had been an Israeli military attache in Tehran and was very friendly with the Shah and some of his high-ranking officials. He later was implicated in Irangate for supplying weapons to Khomeini. (Erez, February 12, 1993.)

Since nearly all Israeli experts routinely discuss neutralizing Iran when they address domestic audiences — rather than speechifying to gullible foreigners — it would be a gross mistake to dismiss the topic as simply rhetoric or disinformation. While there is always the possibility that the experts may be wrong in assessing the Iranian nuclear threat, their virtual consensus that there is a danger, is politically significant.

### Middle East Hegemony

Israel is becoming increasingly open about the possibility of exercising its nuclear option, even though public discussion is often couched in talk about deterrence. "We need not be ashamed," wrote Oded Brosh, a distinguished expert in nuclear politics, "that the nuclear option, as a deterrent to attack, is a major instrument of our defense. The three big democracies have relied on the same deterrent for decades." The Israeli bomb, he implied, was a necessary strategic option. "Generally, in long-term security planning one cannot ignore the political factors. Israel must take into account, for example, that the Saudi royal family is not going to reign forever, or that the Egyptian regime may also change."<sup>25</sup> Precisely because of such political contingencies, Brosh asserts, Israel must remain free to use or threaten to use its nuclear weapons.

Brosh's analysis carries other implications as well: The very comparison of Israel's strategic aims with those of the U.S., Britain, and France illustrates Israel's ambition. If Israel is to become the regional superpower, it must establish its hegemony over the entire Middle East.

There is one crucial difference, however, between Israel and "the three big democracies": Israel, rather than paying for its own nuclear development, is financed by the U.S. It is essential, then, that the American Israeli Political Action Committee (AIPAC), the organized segment of the American Jewish community, and its various allies ensure that Congress continues to foot the bill which now approaches \$3.1 billion. To that end, the U.S. public must be effectively deceived about Israel's real strategic aims.

Another impediment to Israeli ambition is the limitations inherent in U.S. support. When U.S. interests diverge from those of Israel, as they must from time to time, the U.S. will be less likely to pay for or support Israeli policies or propaganda.

For the present, however, the U.S.-Israeli coalition is strong. With the end of the Cold War and the demise of the USSR, a vacuum was created. Israel is stepping boldly into that opening. It is preparing to establish overtly what it always coveted covertly: hegemony over the Middle East. And if the experts are right, it will not shy from any means including nuclear ones to reach that end. Contrary to Gazit's nonsense about benevolent intent, this venture is designed to benefit neither the West, nor potentially unstable Middle East states, nor any interest except that of Israel itself. \*

25. *Ha'aretz*, April 17, 1992.



(Private Prisons, continued from p. 30)

### Prigor

Once number three behind CCA and Wackenhut, Prigor has taken a different tack from its competitors. It carved out a specialized niche within the private prison industry by convincing underused county jails in rural Texas that they could profit by accepting inmates from overcrowded national and statewide prisons. After cutting its corporate teeth on juvenile education and detention and halfway houses, expansion into adult prisons must have seemed a natural step. In 1986, its first year of adult prison operations, Prigor opened minimum security detention facilities totaling 170 beds in Alabama and Virginia. By 1990, the company looked west to Texas, with its seemingly unending supply of prisoners and profits. Soon, it operated or had contracts pending for six 500-bed county "jails for hire," mainly in underbudgeted and underpopulated West Texas, and also with one 190-bed pre-release center operated under contract with the Texas Department of Corrections. Although Prigor, fueled by its West Texas operations, posted fiscal 1991 revenues of more than \$30 million for its adult corrections division, its Texas project was in shambles by mid-1992.<sup>15</sup> (See box p. 30)

### The Critiques of Prison Privatization

Since the last round of prison privatization ended a century ago, a strong ethical and practical presumption has grown up that imprisonment should be solely a function of the state.

The practical challenge centers around the material self-interest of the various pro-privatization constituencies. There are two broad areas of concern: efficiency, *i.e.*, can private operators be trusted to run prisons for less without sacrificing "quality of service"; and accountability, *i.e.*, what oversight mechanisms will assure that society's interests come before those of the managing corporations. As to efficiency—leaving aside for a moment critical questions about what "efficiency" means in prison operations—three well-designed comparative studies found that private operators did run prisons more cheaply without sacrificing "quality."<sup>16</sup>

Typically, the studies found, Wackenhut and CCA were able to provide cost savings of five to fifteen percent while still maintaining high marks for provision of services. Even in Texas, which has one of the lowest cost per prisoner rates, both Wackenhut and CCA came in cheaper.

But what about "efficiency"? If the term means nothing more than the ability to house bodies cheaply while complying with minimal standards, then industry leaders, at least, appear to be efficient. Imprisonment, however, is generally

## D.C. Prisoners Too Much for DMS

Some states export peaches, some ship troublesome wastes across state lines, but the District of Columbia has been more ambitious. In 1989, it signed a contract with Diversified Municipal Services. DMS then offered the cash- and job-poor Texas town of Pecos an opportunity to profit from traffic in overflow prisoners from the nation's capital. DMS's first project, the Zavala County Detention Center in Pecos, opened in 1989 with beds for 226 prisoners.

The operators counted on low wage-scales and design innovations to turn a profit. They didn't count on D.C. prisoners for whom the local guards were no match. The jail soon became unmanageable. Eyewitnesses and legal documents reported vats of home brew fermenting in the showers, roving gangs of baseball bat-wielding inmates, and eight escapes during the year the D.C. contract was in effect. D.C. authorities, citing jail conditions as well as distance and cultural insensitivity, declined to renew and transferred their surplus prisoners elsewhere.<sup>1</sup> Now, the jail is empty, the county's \$4.5 million construction bonds are in default, and DMS has moved on to greener pastures. But DMS's other prison projects, too, are browning around the edges—two are on shaky financial ground, and a third houses no prisoners.<sup>2</sup> •

1. Kyle Pope, "Prison Sellers Fail in Texas, Take Pitch East," *Houston Chronicle*, March 3, 1992, p. 1B; Mason, *op. cit.*, pp. 1, 4.

2. Pope, *op. cit.*, p. 3SR.

15. Prigor, Incorporated, *Annual Report, 1991*, amended Form 10-K, filed with the U.S. Securities and Exchange Commission, January 21, 1992, p. 6.

16. See Samuel J. Brakel, "Prison Management, Prison Enterprise Style: The Inmates' Evaluation," *New England Journal on Criminal and Civil Confinement*, November 14, 1988, pp. 175-244; C.H. Logan, *Well Kept: Comparing Quality of Confinement in a Public and a Private Prison* (Washington, D.C.: National Institute of Justice, 1991); and Texas Sunset Advisory Commission, "Information Report on Contracts and Correctional Facility Services," *Recommendations to the Governor of Texas and Members of the 72nd Legislature* (Austin: Texas Sunset Advisory Commission, 1991), Chapter 5.

acknowledged to include, at best, deterrence and rehabilitation, or at least, reduction of recidivism rates. While there is no definitive private-public comparative study on recidivism, the private prisons, as opposed to the state, have a direct conflict of interest. By reducing the number of repeat offenders, they are in effect reducing the supply of profit-producing "customers." It is in the material interest of these companies, therefore, to produce not prisoners who have "paid their debt to society," but ones who will continue to pay and pay on the installment plan.

The question of accountability is a legal sinkhole. Under U.S. law, the state is subject to constitutional restraints that do not apply to private entities. With prisoners' rights already under attack from Congress and the federal courts, and with ambiguous case law on private versus public liability, some legal scholars are worried. They fear that privatized prisons



place inmates in a legal limbo — caught in a grey area between the state and the private sector — unable to hold either answerable for infringements of their constitutional rights.<sup>17</sup>

Another accountability issue concerns monitoring. The profit-motive could cause private operations to cut corners, leading to poor or unsafe conditions. Privatization proponents argue that regulation and careful state monitoring of compliance will sufficiently protect inmates, but that contention must come as cold comfort to prisoners who have already felt the tender mercies of the state. The record so far, however, shows that compared to the murderous outbreaks in state penitentiaries, incidents of violence, riot, escape and the like have been relatively rare in the private prisons. Direct comparisons are problematic, however, as CCA's Leavenworth facility opened in 1992, is the first, and so far only, private sector institution to handle maximum-security inmates as its primary function.

### Doing Well Beats Doing Good

Aside from practical issues of superficially defined performance, there is the fundamental ethical question involved in farming out the repressive functions of the state to private interests: Should we, as a society, shift responsibility for the ultimate sanction by which we measure normative behavior to those whose motive is profit? The deep philosophical issue is perhaps unanswerable, but the ramifications are disturbing.

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*Imagine a full-fledged corporate public relations campaign designed to whip up crime hysteria in order to increase profits.*

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The most worrisome aspect of prison privatization is the inevitable emergence of a private "prison lobby" concerned not with social welfare but with increasing its dividends, not with doing good, but with doing well.<sup>18</sup> Sentencing guidelines, parole rules, corrections budgets, and new criminal legislation are areas in which private prison operators have a vested interest and could influence policy decisions. They could also benefit by manipulating public fear of crime. Unlike most other public policy arenas, criminal justice policy is largely determined not by the realities of crime but by its perception. That the fear of crime is exploited by politicians and "reality television" programming is a truism; but imagine a full-fledged corporate public relations campaign designed to whip up crime hysteria in order to increase profits.

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17. Harold J. Sullivan. "Privatization: A Threat to Prisoners' Rights," in Bowman, *op. cit.*, pp. 139-55.

18. Michael Janus. "Bars on the Iron Triangle: Public Policy Issues in the Privatization of Corrections," in Bowman, *op. cit.*, pp. 75-89.

### "Prisons Are Built with Stones of Law..."

The practical arguments of prisoncrats and academics, as well as the more abstract philosophical and humanitarian objections of liberal critics, betray a certain myopic view of the problem and thus of its solutions. To accept the current parameters of debate within the criminal justice community is to beg some questions not only about the role of private enterprise in corrections, but also and more fundamentally, about the relationship between state and citizen (or alien) and the function of imprisonment in contemporary America.

By any criteria for cost-benefit analysis, crime and corrections policy in the U.S. is a dismal failure. Prisons neither deter nor rehabilitate, nor do punishment variables seem to have any impact on crime.<sup>19</sup> Granted, imprisonment does incapacitate and discipline offenders, but only while they remain behind bars—and only a minuscule minority of prisoners do not one day return to society. Prisons form a very narrow platform from which to alter behavior that is shaped by myriad factors, but these institutions, and the criminal justice system as a whole, are charged with precisely that task.

Given the failure of corrections to achieve its stated goals, however, it is appropriate to ask whether imprisonment serves other, latent functions and what these functions might be. One role that imprisonment clearly fulfills is that of taking symbolic action against socially defined deviants. It seems to matter less that prisons stop crime than that they give the appearance of doing so—or of doing *something*. In a society unable or unwilling to address the fundamental social and economic causes of criminality, this symbolic action substitutes for substantive reform.

Imprisonment also serves to demonstrate the disciplinary power of the state. In Michel Foucault's view, the prison is the model, the point of origin, for the entire model of social control that characterizes industrialized societies. Incarceration is at one end of a sliding scale of socially imposed surveillance and discipline. After two centuries of widespread acceptance, its place on the continuum is distinguished mainly by the degree of day-to-day control and the physicality of its bars. The scale of control, in less extreme and visible form, however, extends throughout the institutions of society.<sup>20</sup>

As for the privatization of prisons, that industry, while a deeply disturbing phenomenon, is not the fundamental problem. Private prisons are a symptom, a response by private capital to the "opportunities" created by society's temper tantrum approach to the problem of criminality in the context of free-market supremacy. Dostoevsky once remarked that he measured the quality of a society by the quality of its prisons. In the present case it may be as appropriate to judge us by their quantity, too. In either case, the judgment would be harsh indeed. •

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19. Jamieson and Flanagan, eds., *op. cit.*, pp. 427, 612.

20. This argument was developed by French philosopher Michel Foucault in *Discipline and Punish: The Birth of the Prison* (New York: Random House, 1979).



*(Nuclear Wasteland, continued from p. 45.)*

professor at Illinois Institute of Technology in Chicago and chair of the U.S. Department of Energy's Environmental Restoration Waste Management and Advisory Committee, is pessimistic. "We can't be sure there will be technological breakthroughs in the future that will make cleanup techniques more effective and less costly. History doesn't give us much confidence that will happen."<sup>49</sup>

DoE has not put a lot of money and effort into research and development. "With a few exceptions, the same cleanup techniques that were available close to 20 years ago are the same ones available today," says Paulsen. "They are often costly and not very effective."<sup>50</sup> With actual reduction of radioactive waste an impractical goal, from the standpoint of both technological capability and cost — cleanups simply shift the poison from an immediately dangerous site to a potentially less dangerous one.

**High Cost:** And then there is the staggering cost of even partial cleanup, most of which will be picked from taxpayers'

pockets. According to conservative estimates, it will take over \$25 billion and at least 50 years just to clean up SRS's 400 contaminated sites.<sup>51</sup>

Nationwide, cleanup costs could rival the bailout of the savings and loan industry and hinder efforts to balance the budget for years to come.<sup>52</sup> "Various figures have been put forth to project the cost of the cleanup," says Paulson. "I've seen the figure \$200 billion. But no one really knows what the final cost will be because we really don't know what we are dealing with."<sup>53</sup>

And that has been the problem all along. Military men dreaming more potent weapons, government officials reaping political benefits, and corporations making huge profits have made decisions without knowing, and often without caring, what they were dealing with. The hellish marriage of profit and national security has spawned poisonous and nearly immortal offspring. The cost will be subtracted from the health of the planet and the lives of its inhabitants. •

49. Author's interview, February 10, 1993.

50. *Ibid.*

51. "Reactor's Reception Unfriendly," *The State*, November 11, 1988, pp. 1E, 3E.

52. "What Is the Savannah River Plant and What Is Its Purpose?" *op. cit.*

53. Author's interview, February 18, 1993.

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# Letters

## Pelican Bay Prison

From May 8, 1990 until December 19, 1990, I was in Pelican Bay State Prison Security Housing Unit (PBSP-SHU) and was one of the 250 civil suits mentioned in Dr. Weinstein's and Mr. Cummins' "The Crime of Punishment," (Spring 1993). I was transferred to the Vacaville, California Medical Facility in February in a direct attempt by staff to moot the complaint I filed concerning the inadequate diet which was aggravating my diabetic condition. I am back at PBSP now and want to correct some small errors in the article.

While there are video cameras in every corridor of the facility, *there are no monitors which look directly into the cells of a pod.*

Also, to go to exercise, we exit our cell, strip, go through the routine (bend over and cough) and re-dress, often in front of female guards in the control booth, and then step through a solid steel door.

One last correction: While it is true that at the time of this article's publication we got only six Colorado t.v. stations, as of June 30, the prison is on cable and gets most major stations.

Every other fact mentioned in the article is pretty damned accurate. In fact, I *witnessed* a mentally-ill prisoner cell-extracted and beaten after he was handcuffed! Believe me PBSP-SHU is hell!

As far as acute appendicitis is concerned, I suffered one on B-yard in September 1991. I began with severe pains in the center of my diaphragm and started violently vomiting. My cellie called "man down" and the M.T.A. and guards said I'd just have to "tough it out" until the clinic opened in the morning. This was about 11:00 p.m. I puked all night and got no sleep. At 8:00 or 9:00 the next morning, I was taken to the clinic, then to the infirmary, and finally to Sutter Coast Hospital where they removed my appendix.

Lastly, I would like to express my appreciation to CAQ for the gift subscription. Also, let me close by saying that the hard-hitting reporting found in CAQ is some of the best, well-researched journalism I've ever read.

In solidarity,

Louis R. McCombs

Pelican Bay State Prison

[CovertAction often receives requests for gift subscriptions from prisoners. We welcome contributions from readers earmarked for that purpose.]

## Who Are the Real Terrorists?

Your publication has a well-earned reputation for accuracy and objectivity — qualities sadly lacking in "Ireland's Targeted Generation" by Betsy Swart.

Ms. Swart misquotes me twice. In the first, on page 51, she scrambles the words of my original sentence in *Top Secret* magazine. It should have read: "the U.S. appears to have entered Northern Ireland's political arena, promoting its own choice of nationalist political party, the SDLP."

The other misquote is more serious: "Hanahoe contends that U.S. tentacles are tightening around Ireland in an effort to accomplish two main goals: '[T]he ending of the Republic's military neutrality through membership in the EC and NATO, and the simultaneous undermining of progressive resistance in the North through the neutralization of the Sinn Fein Party.'" I wrote that "evidence suggests that the U.S. is seeking to accomplish two important goals in Ireland — the ending of the Republic's military neutrality (through joining NATO) and the undermining of the IRA, through neutralizing the IRA's high-profile political wing, Sinn Fein."

Swart's insertion of "progressive resistance" could imply that I regard Sinn Fein and the IRA as progressive/reformist organizations. In fact, I made clear that the "prolonged IRA campaign of bombing, shooting, murder, intimidation and economic sabotage" in Northern Ireland is terrorism — terrorism ignored by Ms. Swart in her article.

She seeks to portray the four IRA members around whom she has constructed her article as naive "boys...who had decided to launch...[a] Don Quixote-like attack using a general purpose machine gun" against an "invulnerable" barracks. The truth, however, is somewhat different. Decisions — such as armed operations — are taken by senior personnel, including the local Intelligence Officer. In attacking the barracks, the four boys would have followed the explicit orders of a military command structure which sent them to their deaths.

"The boys had driven into the car park where they hoped to blend in with other local youths socializing there" — i.e. to use them as unwitting human shields. Ironically, had these youths been shot, the IRA would have used the killing of innocent local youths by the Brits as propaganda. Use of civilians is not unusual, as when the IRA forced Patsy Gillespie to drive a van loaded with a bomb to the Buncrana Road Checkpoint in Derry. The bomb killed five soldiers — and Gillespie.

The IRA's self-portrayal as a patriotic armed group fighting an imperialist power, Britain, has conferred a legitimacy and respectability that other terrorist groups (such as Reagan's 'Freedom Fighters' — the Contras, UNITA, Renamo, etc.) have not achieved. However, as in Nicaragua, Angola and Mozambique, it is the civilians who have been the real victims of the terrorism in Northern Ireland.

Over 3,000 people, many of them civilians killed by the IRA, have died in the two decades of terrorism which the people of Northern Ireland have endured at the hands of the British forces and the Loyalist and 'Republican' paramilitaries. The callousness of the IRA can be judged from a recent wave of mindless IRA bombings in urban areas which has created a reign of terror among the civilian urban population.

Add to this the IRA-run protection and extortion rackets, their armed robberies, their taking of innocent civilian hostages, their execution and maiming of civilians (suspected informers, suspected criminals, car 'joy-riders' and others whose only 'crime' appears to have been that they were Protestant), and one begins to get an accurate picture of the IRA — a picture rather different than that painted by Ms. Swart.

Tom Hanahoe  
Dublin, Ireland

## Betsy Swart Replies:

Tom Hanahoe's research into the activities in Ireland of the National Endowment for Democracy and other CIA-linked U.S. organizations greatly enhanced my understanding of the continuing conflict there. I apologize for mistakenly attributing the phrase "progressive resistance" to him.

Unfortunately, though, Hanahoe missed my main point. I did not take a position either for or against the activities of the IRA but attempted to get beyond the demonizing rhetoric that has strangled most political commentary on the IRA for the past two decades. Instead, I chose to explore some of the reasons why people have chosen to join the IRA.

Some people — like Barry O'Donnell — joined because the British military has cut off every opportunity for them to have a conventional future. By the time O'Donnell was 20, he knew he would never get a job, finish his education, or be allowed to emigrate to a country where he *might* have these ordinary opportunities. Furthermore, he was subjected to daily street harassment and frequent psychological abuse in detention centers by British military and police. Given these facts of life, he made a choice to join the IRA. My hope in pointing this out is not to rally support for the IRA but to rally support of human rights groups for people like him.

Perhaps Mr. Hanahoe does not accept the premise that a war is going on in Northern Ireland. That seems to me the only reason why he would criticize the IRA for taking decisions that are the same decisions any military force would take in what it considered a wartime situation.

In the last 20 years, British soldiers have been responsible for more than 350 unexplained civilian deaths in Northern Ireland. Collusion between British soldiers and loyalist paramilitaries has widened the range of targets and increased the number of killings. Thousands of nationalists have been tortured and imprisoned. There is no bill of rights in Northern Ireland. An accused person has no right to silence and can be imprisoned without charge or trial for an unlimited time.

Furthermore, the military upholds a system of economic apartheid in Northern Ireland which is only comparable to that of South Africa.

Much of this "terror" at the hands of the government is unknown by the general U.S. public. It is also little known in Ireland where stringent censorship laws exist. Mr. Hanahoe's own letter is an example of the uncritical acceptance of the rhetoric of terrorism generated by British military intelligence and splattered by every mainstream media source. In Hanahoe's litany of recent "callous" and "mindless" IRA terrorist attacks, he fails to mention that few injuries and no deaths resulted from these incidents. Hanahoe says that the people of the North are terrorized. More likely, British banking and financial institutions are experiencing the terror of depreciating capital.

Meanwhile, the vast majority of human rights violations are perpetrated on the people of Northern Ireland by the British government — a fact Mr. Hanahoe takes lightly.

Betsy Swart  
Washington, D.C.



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